

STAFFORD COUNTY PLANNING COMMISSION MINUTES

November 2, 2011

The meeting of the Stafford County Planning Commission of Wednesday, November 2, 2011, was called to order at 6:33 p.m. by Vice-Chairman Michael Rhodes in the Board of Supervisors Chambers of the County Administrative Center.

MEMBERS PRESENT: Howard, Rhodes, Fields, Hazard, Apicella, Kirkman and Hiron

MEMBERS ABSENT: None

STAFF PRESENT: Harvey, McClendon, Zuraf, Ennis, Doolittle, Lott, Ansong, Hornung and Knighting

DECLARATIONS OF DISQUALIFICATION

Mr. Rhodes: Are there any declaration of disqualification? Hearing none, we'll move forward. Before we start on the agenda if there are any recommendations for adjustments I would entertain those now, if not, I would entertain a motion to adopt the agenda as it is listed.

Mr. Fields: So moved.

Mr. Hiron: Mr. Chair

Mr. Rhodes: Yes.

Mr. Hiron: I believe we had an adjusted agenda. Was it published properly?

Mr. Rhodes: Correct.

Mr. Harvey: That is correct, we posted it on the web.

Mr. Hiron: Okay.

Mr. Harvey: The adjustments to the agenda were to reflect a change to the dead line date for the wetlands mitigation bank, because that's not due until January and then also went back and re-reflected when the Planning Commission should consider authorizing public hearings for various items.

Mr. Rhodes: We have a motion to accept the modified agenda.

Mr. Hiron: I second the motion.

Mr. Rhodes: Second, very good.

Mr. Fields: This is the agenda that was at our place when we got here, right?

Mr. Rhodes: Correct, they had some corrections and clarifications on the date they had posted.

Mr. Fields: Okay.

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Mr. Rhodes: Any other discussion on the agenda? Okay, I will now call for the vote. All those in favor of accepting this agenda say Aye.

Mr. Hirons: Aye

Mr. Mitchell: Aye

Ms. Kirkman: Aye

Mrs. Hazard: Aye

Mr. Fields: Aye

Mr. Rhodes: Any opposed? Okay, it goes 5... 6-0, Ms. Kirkman has arrived, did you vote on that one, I'm sorry.

Ms. Kirkman: Okay then 6-0. Thank you very much. With that, Mr. Harvey first item.

Mr. Harvey: Thank you Mr. Rhodes, the first item on the agenda today is dealing with the transfer of development rights and Ms. Ansong will give an update on the matter.

UNFINISHED BUSINESS

1. Comprehensive Plan Amendment and Zoning Ordinance Amendment; Transfer of Development Rights (**Time Limit: December 5, 2011**) (**History - Deferred at September 21, 2011 meeting to October 5, 2011**) (**Deferred at October 5, 2011 to October 19, 2011**) (**Deferred at October 19, 2011 to November 2, 2011**) (*Authorize for Public Hearing by: November 2, 2011*) (*Potential Public Hearing Date: December 5, 2011*)

Ms. Ansong: Good evening members of the Planning Commission. I stand before you tonight to go over the topic of transfer of development rights. At the last meeting which occurred on October 19th the issue of TDR's was deferred to this meeting. So tonight each of you has a memo, and the memo addresses the three concerns which were brought up at the last meeting. There was a request for a copy of the Frederick County TDR ordinance, and I believe each of you has received a copy of that ordinance. There was also a request for a copy of the TDR State Code, which each of you have been supplied with. And, there is also a request for examples of the minimum acreage for sending areas and other existing TDR programs across the county. And, I stated some examples from Kent County Delaware, King County in Washington and Frederick County Virginia, Montgomery County Maryland and Collier County Florida. After the meeting, there were a few more questions which were brought up, and a few more concerns, so I would also like to address that as well. Tonight you also received a packet in addition to the staff report which was delivered to your home. In the packet, which you received tonight, you will see the PDR deed, a Planning Commissioner requested a PDR deed to see the structures which were live in the PDR so there is an example of that for your reviewing. There is also an analysis of shalls and mays in the TDR statute that also was requested. And you will also see a yellow packet, and the yellow packet, is an original ordinance that was referred to the Board in September, I'm sorry that was referred to the Planning Commission by the Board in September. And then you will have a green packet which is the original section of the comprehensive plan amendments

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based on the original proposed ordinance for the TDR. What you also have in the packet which was passed out tonight, is the updated ordinance, and the reason why you have an updated ordinance, is because this past Saturday the TDR sub-committee met and on that sub-committee we had our Commissioners, Apicella and Howard, those two sat on the committee and I believe they were discussed further the issues that were brought up at that committee on Saturday. But the updated ordinance is a result of that meeting from that past Saturday, October 29th. Lastly, you will also find a letter from our Commissioner of the Revenue, Mr. Scott Mayausky and that letter addresses TDR tax abatements. And, if I have your permission, I would like to ask him to come up to the podium if possible because at the last meeting there were several questions concerning tax abatements and things like that and we have him with us tonight.

Mr. Rhodes: Okay, certainly, please... Mr. Mayausky, thanks again for joining us we will try not to make this too much of a habit.

Mr. Mayausky: Thank you Mr. Chairman.

Mr. Rhodes: Well we like your company.

Mr. Mayausky: It's always a pleasure.

Mr. Howard: Are there particular questions for Mr. Mayausky? I know we had some last time. Mr. Apicella...

Mr. Apicella: Upon review of the State Code there was a provision that allows property owners to seek tax abatement in lieu of actually transferring their development right to a receiving area. So when we met on Saturday, we discussed it, thought it had merit, and wanted to ask the Commissioner of Revenue what his thoughts were and any problems, concerns that he might see with following this tax abatement program. So, I don't know if you have some comments you want to make.

Mr. Mayausky: Well I looked at the tax abatement issue from two stand points, one the impact that it might have on the general fund revenues. I looked at the number of eligible parcels within the Brooke sending area and how many of those parcels are in land use. If those parcels are in land use then that really minimizes the impact of lost tax revenue. And by far, the majority of them are. I think of the sixty parcels that are over twenty acres, thirteen of them... only thirteen of them, are not in land use. So if they did go into a tax abatement program it would have very minimal impact on our overall tax base. In analyzing the abatement program, it seems to me like it could be a successful program, however, there are, I think easier ways to accomplish the same goal than through the TDR program. One of those is simply a conservation easement. A conservation easement would in effect, accomplish the same goal without requiring the property owner to go through all the hoops of the TDR program.

Mr. Apicella: But if they... I understand with the conservation easement they would get a Federal tax credit? Perhaps a State tax credit as well?

Mr. Mayausky: You get Federal and State, and how it affects your local taxes is it basically does the same thing the TDR does. It removes the development pressure from that property. As you give away your development rights the market value of that property is reduced because the highest and best use of most property is development. So at the end of the day, I think TDR and the conservation easement gets that property owner to the same point if they are seeking to preserve the property.

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Mr. Apicella: What would be the down side of allowing them to have both options, either doing a conservation easement or seeking a tax abatement through the TDR program?

Mr. Mayausky: I'm not sure there would be a down side. It could just be another tool that we offer folks who want to preserve their property. I think there is an easier route for them to go, but I'm not sure that there is a down side to allowing it to remain within the TDR program.

Mr. Apicella: Does anyone else have any questions?

Mr. Howard: Any other questions for Mr. Mayausky?

Ms. Kirkman: Yes, Mr. Chair.

Mr. Howard: Ms. Kirkman.

Ms. Kirkman: Mr. Mayausky, you said you looked at properties of twenty acres and larger. Were you aware that both versions of the TDR ordinance allow for properties as small as two acres to be used for TDR?

Mr. Mayausky: Yes, I understand... yes, I did. They obviously don't qualify for the tax relief program. Again, they would have minimal impact on the general fund revenues because their values are so low to begin with. The development of in the case of the Crow's Nest Harbor lots is so far in the future that there really is no development pressure on them now. If they were to either put a conservation easement or enter into the TDR program, there values would be reduced a little bit but they are already minimal when you compare them to other properties that are in areas that are developing faster and sooner. So again, it would have very minimal impact on our overall tax base, even those two acre lots.

Ms. Kirkman: And why is it that they are valued so low?

Mr. Mayausky: Any property is only worth what the market will bear. Most raw land... the desire for that land is that the buyer wants to do something with it. The requirement that water and sewer have to be part of, I believe I'm correct, somebody correct me if I'm wrong, water and sewer needs to be in place before Crow's Nest Harbor can be developed. That pushes that development off into the future where it really impacts the market value of that as opposed to a property that can be developed today or tomorrow. We are looking way into the future its unknown when that property will be developed and that really does impact it's market value.

Ms. Kirkman: Well in fact you are saying we are looking way into the future but now that there is a UDA at Brook which brings water and sewer to Brook, which brings water and sewer to within two miles of Crow's Nest Harbor, in fact, the development of those lots is very probable in the near future in fact, probably concurrent with the Brook UDA. How would that affect the value?

Mr. Mayausky: That will be reflected in the sale prices of those properties. Right now they are selling for minimal values because there is no immediate relief for the water and sewer issue. As that water and sewer gets closer to the properties, then you will see those starting to sell for more. And once they sell for more, then we'll assess them for more. But as it sits now, there's not much pressure for developing those properties which is keeping that market value low.

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Ms. Kirkman: Well could you then explain, and I think this has been raised on other occasions. Sometimes what we see are gross discrepancies between the tax assessed value of a parcel and its actual selling price. And in the past when I have inquired about those from your office, what has been told to me that you all can only assess based on your algorithm with this company that you contract with, yet what you're tell us know is your talking about the fair market value. So could you explain?

Mr. Mayausky: I would ask for specific examples of gross discrepancies, but I think where you see the greater discrepancies is on commercial properties in transition areas. And 610 is a good example of that. Properties up and down 610 especially where it is transitioning from residential to commercial, they will sell for wildly different prices. Depending upon what the owner is looking for, it's access. A number of different issues, some of which we can't account for will cause properties to sell for a lot more than it looks like they should. A good example is down actually on Route 17 in front of the Target. There is a strip center now right in front of the Target. And Target paid I think five times more than anybody else had ever paid for anything on Route 17 for that pad site because they wanted it. So we were grossly under assessing that pad site but they wanted it and they were willing to pay for it. So you see that more in commercial properties than you do residential. Residential is much more gradual because you are really limited by your utilities.

Ms. Kirkman: Well sure, two of the examples that come to my mind are there is a property owned by I think it was Stafford Lakes Limited Partnership over by Eskimo Hill Road. It was tax assessed valued at a couple hundred thousand, was sold for two hundred thousand to an entity but then resold it for eight hundred thousand and then resold it for 1.2 million. During that entire time the tax assessed value remained stable at several hundred thousand. Another example I can think of is a vacant lot that was on Dobey Point Road that was tax assessed valued at a couple hundred thousand and sold for, I think it was about five or six hundred thousand.

Mr. Mayausky: Yes, I would have to look into those individual sales and see what happened. Sometimes sales aren't arms-length. They will transfer from one corporate entity to another. We have to research those sales and if they're not arms-length then we can't use that as the basis for the assessment. The two things that drive the assessments are the market value and equity. We can't pick one sale. If we've got five comparable properties and one sells for twice as much as the other four, we can't just value that one that sold for twice as much at what it sold for. We have to make sure everybody is treated equitably and fairly. And the market value, in that case, would be what the majority of them sold for. Not what that one individual parcel sold for. So those specific cases I would be happy to sit down with you and take a look at them but we would have to look at those on a case by case basis.

Ms. Kirkman: The State statute requires severed property rights to be taxed.

Mr. Mayausky: Yes.

Ms. Kirkman: Can you please explain how that will occur?

Mr. Mayausky: Yes, part of the ordinance requires recordation of the severed property rights. Once the planning department assigns the severed rights and the number of rights, I believe through a certificate process to the property owner that will be recorded in the Clerk's office. We read every deed that comes through the Clerk's office, about seven thousand of them last year. We will read those deeds and we will treat them like any other property. We will assign a unique tax number to it so we

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can follow that property, when it sells we'll see the sale price and we'll follow the market. Presumably, these will create their own market, much like stocks do. And we will follow that market through the recordation and the considerations on the deeds and we will assess them in the same manner that we do all real estate.

Ms. Kirkman: So you are saying that they will be assessed based on what the property rights are selling for.

Mr. Mayausky: Yes.

Ms. Kirkman: Were you aware that the State statute actually requires you to assess them based on the difference between the value of the property before and after the severance of the property rights?

Mr. Mayausky: I have not read that in the State statute, that would require us to treat that property differently than we do any other real estate entity. The Constitution requires that properties assessed at a hundred percent fair market value. So I will be happy to look at that.

Ms. Kirkman: Sure you might and perhaps Mr. Taves might want to chime in on this but I think that specific provision is in section I of the state statute.

Mr. Mayausky: Yes, I'd be happy to talk to Mr. Taves about that. I would have a difficult time as a tax assessor if the markets telling us that they are trading hands at one price, that they would be valued at a different price. But I'll be happy to take a look at that and work through those details.

Mr. Taves: That's fine we can get together on that.

Mr. Mayausky: Okay.

Mr. Howard: Alright, Mr. Mayausky if in fact that is the correct interpretation of the State Code, going back to your opinion on the tax abatement program, not having much of an impact in the revenue collection from your perspective, would you still hold that same opinion?

Mr. Mayausky: I would and theoretically the value should be the same. They should be selling on the open market for the difference you know the extraction price so to speak. If it was worth twenty thousand dollars with the rights and it's now worth ten thousand dollars, well the market is telling us that that rights worth ten thousand dollars. So they should be within the same ballpark, so I would say that yes that that does not affect the tax abatement.

Mr. Howard: Okay, are there any additional questions for Mr. Mayausky while we have him here this evening? Ms. Hazard...

Ms. Hazard: Well I hate to jump ahead because I'm sort of looking at the revised statute and trying to get my arms around that one a little bit. So I don't know if it's better to wait until we've had sort of an overview of the changes that have been made because I hate to sort of throw them at Mr. Mayausky as well in case he hasn't seen this document. Because I did have some questions about the part about if a residential right gets converted into a commercial right. But like I said until you all sort of present that I didn't want to....

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Mr. Howard: Okay we can hold on that just in case.

Ms. Kirkman: Yes, Mr. Chair.

Mr. Howard: Ms. Kirkman.

Ms. Kirkman: And this could be for either Mr. Taves or Mr. Mayausky. It really has to do with the way in which the Ordinance is structured because what I wanted to know is what will keep a property owner from both selling severed rights and getting a tax abatement? What language in the Ordinance keeps that from happening?

Mr. Taves: I'm not sure I understand your question... you don't want somebody to be able to get a tax abatement?

Ms. Kirkman: No my question is currently right now this program is structured on a free market concept so to speak, that there will be value for these severed property rights, development rights and that those will be sold on an open market. So the first transaction is the property owner selling the development right. But this legislation also gives the property owner the right to receive a tax abatement. And what I'm asking is what keeps the property owner from doing both? What language in the Ordinance keeps them from doing both?

Mr. Taves: Well let me just go back for a second. The provision regarding the tax abatement which I think is what Commissioner Apicella brought up earlier that is not a mandatory requirement in the Ordinance. You don't have to have that in the Ordinance in the first place. It's one of those mayas that we talked about. So it's in the proposal that the Planning Commissions TDR sub-committee worked on but it's not a mandatory requirement. In terms of the tax abatement, the... presumably because they're getting a tax abatement there is some value to it at some point and time that certainly under those provisions it could be transferred, sold.

Ms. Kirkman: So you're saying that the way the alternative version put forward by the TDR Committee is currently structured a property owner could both sell the development right and get a tax abatement.

Mr. Taves: No, my understanding is that the party who owns the development rights that have been severed, and that actually would be the first transaction. Not the sale but the severance of the development rights would be the first transaction actually. It might be coincident with the sale to another party, but the party that would get the tax abatement is the owner of those development rights. So if party A owns the sending property and party A not only severs the development rights from the sending property but sells them to party B and party B wants to go the route of getting a tax abatement as opposed to being able to sell the development rights and have them later attach. Obviously, if the tax abatement goes through then the development rights are essentially extinguished. You can't transfer them.

Ms. Kirkman: But where in this legislation does it say that you cannot both sell... that's all I'm asking is for clarification here. Where in the planning in the TDR Committee report does it have that you cannot both sell the right and get a tax abatement for the right?

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Mr. Taves: I think at the end of the... well, it's... I'm looking at the State Statute right now I'll be glad to look at the Ordinance.

Ms. Kirkman: Yes I need to know specifically and what came out of the TDR Committee where it makes it very clear you cannot do both.

Mr. Taves: Well let's see. It's on page 17 of the version that Mr. Harvey handed out. And in the second to the last line of that provision it says, get a tax abatement to compensate the owner of the development rights for the fair market value of all or part of the development rights which shall retire the number of development rights equal to the amount of the tax abatement. So if you get the tax abatement, the development rights are retired. Meaning, they are gone. And actually if you look at this, there would be... the way we drafted this, they would make application to the Commissioner of the Revenue, who happens to be standing in front of you all right now, and I assume there would be a written agreement relating to that. That's what we would certainly anticipate if this provision ended up being in the Ordinance.

Ms. Kirkman: Do we have a definition anywhere in the Ordinance of what it means to retire development right?

Mr. Taves: I think that's the only place... my recollection, Mr. Harvey can correct me. It's the only place I recall where that word is used, in either the Ordinance or the Statute.

Mr. Harvey: I believe you are correct. In the definition section we refer to extinguishment of development rights.

Ms. Kirkman: And what's the difference between extinguishment of development rights and retired development rights?

Mr. Taves: The extinguishment would come about by virtue of their attaching to another property to or receiving property. And so the certificate, the rights represented on the, what we call the TDR certificate would go away, would be extinguished. So, Mr. Mayausky from his point of view, once those development rights got attached to a receiving property he'd now be taxing that receiving property with the knowledge that those extra development rights were attached. And he would not be taxing any longer the development rights that have been previously floating around in the ether so to speak.

Ms. Kirkman: So I guess that gets back to where I was asking about which is, it seems that you are creating two different processes, one which is to extinguish development rights and the other which is to retire development rights.

Mr. Taves: Retires the word that's used if you look at paragraph C-3 in 15.2-2316.2. I hate to get all legal and everything but that's the sections. Page 130 of the State Code at the bottom paragraph 3...

Ms. Kirkman: Excuse me did you say page 130? Because the things... what you sent us starts with page 175.

Mr. Hirons: On 176.

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Mr. Taves: Okay hold on... I'm looking at another version... that's 176, sort of down near the bottom paragraph 3. It's the same exact language, but as you can see that provision uses the word retire.

Ms. Kirkman: So, I guess that's, you know, what I'm trying to understand here. Should we be using the word retire consistently throughout the Ordinance or the word extinguish consistently throughout the Ordinance? Or are they two different things? And, if they are two different things, what keeps the same property right from being both extinguished through transfer to another property and retired through tax abatement?

Mr. Taves: From a legal point of view I don't think it matters what you call it, extinguish, retire, the same affect applies to both circumstances. But once those development rights are extinguished or retired then there is no value to them, they don't exist any longer. And Mr. Mayausky takes certain actions based on that when he has those deeds come through his office to adjust his tax assessments for either the property, well in that situation would be in the retirement situation where you had the tax abatement he would adjust the value, I would assume, of the development rights that are being retired because they had value before there was a tax abatement on them and now it essentially wouldn't have any value. In the extinguishment, those property rights would become attached to a receiving property and the receiving property presumably would get a boost in its value and the development rights that attach to that receiving property would be extinguished or retired, whatever you want to call it.

Ms. Kirkman: So I'm looking at the definition of extinguishment of development rights in the Ordinance as proposed, and I have yet to see in the language of the Ordinance... so based on this, property... development right is extinguished when it's transferred to another property.

Mr. Taves: Well in that situation, actually we use it another... you point out an interesting point. In that situation, extinguishment of development rights, they are extinguished from the sending property when they are severed. So presumably you may have five development rights on the sending property and if five development rights are severed they are extinguished from the sending property. They aren't extinguished forever because now it's a separate, is it fair to say a separate taxable entity, a separate piece of property.

Mr. Mayausky: Yes.

Mr. Taves: That would be taxed.

Mr. Apicella: Mr. Chairman, could we not add a definition for retirement of development rights?

Mr. Howard: We certainly could.

Ms. Kirkman: So, but I think this is important because you know we need to make sure that there aren't some loop holes here. So what would keep a property owner from doing the certificate of development rights, then seeking the tax abatement and then once they seek that tax abatement, selling those transfer rights... those development rights.

Mr. Taves: I think you... the way I view this statute, once you go down that path of entering into an agreement with Mr. Mayausky you have gone down that path. You have made that decision.

Mr. Howard: I think the question...

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Ms. Kirkman: That's because we have the language about the development rights retiring but we don't define what retiring is. So by adding a definition will that solve that problem?

Mr. Taves: To tell you the truth, I don't think there is a problem but we can certainly add a definition for... I mean, I don't see the need for that but we can certainly do that if you want us to draft that up.

Ms. Kirkman: Thank you.

Mr. Howard: Mr. Mayausky.

Mr. Mayausky: If I may make one point of clarification going back to an earlier question that Commissioner Kirkman had regarding the evaluation of the development right. Subsection I of the enabling legislation says the transferrable development right shall be assessed at its fair market value on a separate real estate tax bill. So that's consistent with how we value all other property, we value it at its fair market value, which we'll track through the recordation process.

Ms. Kirkman: Well could you then explain this sentence that is in that paragraph which says once a transferrable development right is severed from the sending property, the assessment of the fee interest in the sending property shall reflect any change in the fair market value that results from the inability of the owner of the fee interest to use such property for such uses terminated by the severance of the transferrable development right.

Mr. Mayausky: My understanding is that... That means that we will have to for lack of a better word re-assess the sending property, give it a new value based upon its new use. And its new use will be... it now has less development rights than it did prior to the severance. So we would be lowering that value to account for the loss and rights that that property now has. And then that severed right that goes through the certification process that will be taxed at fair market value.

Ms. Kirkman: So then how does that differ from the tax abatement process?

Mr. Mayausky: The tax abatement process as I understand it, we just would stop taxing basically that severed right and it would cease to exist. We would have to develop some sort of internal process to void those certificates or insure that those things don't end up back on the market. We have processes like that now that when property is combined you have two taxable parcels they get combined into one, well we have to dispose of that one old parcel now or we can no longer tax it. So we have processes in place that deal with parcels that extinguish, you know I can only envision that the development right would be handled the same way.

Ms. Kirkman: So there are two... because I'm trying to understand the taxation piece and the impact it will have on the county revenues. So there's actually two taxation processes that will have to occur. One is the taxation of the development right and one is the new value on the property now that it no longer has the development right.

Mr. Mayausky: Correct, correct. Let's assume we've got a parcel worth two hundred thousand dollars and a hundred and fifty thousand of that value is its development potential. If you extract those rights then that parcel in theory will be worth fifty thousand and those rights that you extracted should be worth in the neighborhood of a hundred and fifty thousand dollars. So if you add the two pieces together you're back to your total of two hundred thousand but now they're in two pieces.

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Ms. Kirkman: So, that's again where I get... where I'm not quite following your thinking because you said based on its development potential. And every other time when you stood before us you said that property is not based on its potential it's based on its use.

Mr. Mayausky: No, it's based upon its highest and best use, which encompasses its development potential. If you own a parcel on 610 next to a Wal-Mart it may be your house, but the highest and best use of that property is most likely commercial. And it will have a commercial value. I don't know if you were on the Planning Commission a couple of years ago when we had a very similar discussion after a newspaper article came out where the couple that lived on 610 on a forty acre farm across from Parkridge. They got a four million dollar tax bill, fortunately they were in land use but they got a four million dollar tax bill because it was assessed at its highest and best use which is no longer as a hay field. It's as developable units.

Ms. Kirkman: Thank you.

Mr. Mayausky: Yes.

Mr. Howard: Any other questions for Mr. Mayausky? If not, we can have Ms. Ansong come back up and if you want to take us through the changes with the differences in the two...

Ms. Ansong: Sure.

Mr. Howard: ... Ordinances. The one proposed by the Board and the second one that was proposed by the TDR Committee.

Ms. Ansong: okay.

Mr. Howard: And I think if you highlight the differences...

Ms. Ansong: Sure okay.

Mr. Howard: ... that would be a great place to start.

Ms. Ansong: Okay so you have an original Ordinance which has a yellow cover sheet and that's the original Ordinance that the Board referred to the Planning Commission to review back in September. And what you also have is the new updated edited Ordinance based on the sub-committee meeting which took place this Saturday. And just to go through some of the highlights which occurred. My copy is deep in here but let me just go ahead and state what some of the changes were based on memory. One change which occurred dealt with Brooke Station and the original Ordinance had stated that all the units in the Brooke Station UDA would be based on TDR's. And on Saturday it was determined that actually Saturday and also prior discussions here at the Planning Commission meetings it was um decided that Brookes Station would only... only fifty percent of the units would be based on TDR's. So only four hundred and thirty-five units in the Brooke State UDA would be based on TDR's. That was one change.

Ms. Kirkman: Mr. Chair, I have a question regarding that

Mr. Howard: Ms. Kirkman sure.

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Ms. Kirkman: You said it was decided that um only half would be based on TDR's. My understanding is that's in the Comprehensive Plan. How can the sub-committee decide that? Does it make a legislative act of the Board of Supervisors?

Ms. Ansong: I'm not quite sure in terms of all the legislation that's behind it but then we also have to do a comp plan amendment as well in order to have that done.

Ms. Kirkman: Thank you.

Mr. Apicella: I don't think that a sub-committee decided anything we're proposing a certain number of changes that I think Ms. Ansong is going through for the PC's consideration.

Mr. Howard: Yes, go ahead Ms. Ansong

Ms. Ansong: So another proposal that was brought up this past Saturday was to include more zoning districts in the receiving areas. I believe right now in the receiving areas we had I want to go... I want to say A-1, A-2. We had very few zoning districts but it was proposed on Saturday that we add a few more zoning districts to the receiving areas and those would include PD-1, PD-2 and PD&D to the receiving area. That was another proposal.

Mr. Taves: Excuse me Mr. Chairman, can I bring something up about Ms. Ansong's first point about the fifty percent

Mr. Howard: Yes I believe it's in the comprehensive plan language.

Mr. Taves: That may be but I believe what we talked about, my recollection is what we talked about at the TDR Committee was um no more than fifty percent of any one development project also would be allowed to be TDR's and that's on page 19 of the new draft.

Mr. Howard: Correct and the rationale behind that and you can correct me or add to it was as not to allow the first end to benefit completely.

Mr. Taves: Right to use up all the TDR's right away.

Mr. Howard: To allow a fair number of people to participate in the TDR program if in fact that ends up being the case.

Ms. Ansong: Thank you Mr. Taves. Another change which was proposed this past Saturday dealt with the conversion rate. Thank you. Right now in terms of TDR's, prior to this meeting we had stated that in terms of the Transfer Development Rights, when one development right equaled one basic one residential unit in the receiving area and it was proposed on Saturday at the sub-committee meeting that there was two ways in terms of converting a TDR unit. So not only do we have it where one development right can equal one residential unit at the new edition is that one development right can also equal up to four thousand square feet of commercial space in non-residential area.

Mr. Harvey: Mr. Chairman and Commissioners the logic behind that was that the Committee felt that it was important to encourage non-residential development as well as residential development through

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TDR. The four thousand square foot number came about based on the average size of a house being built in the county so if you use a house is equivalent...

Mr. Howard: Well you did two calculations one is the average size of the home being built and then you showed us a number that was the actual average house.

Mr. Harvey: Yes.

Mr. Howard: In Stafford, okay sorry go ahead.

Mr. Harvey: Yes sir.

Mr. Howard: I just wanted that distinction because I think the homes today are a little bit larger but you also did a second calculation. What's the existing population overall on average.

Mr. Harvey: Correct.

Mr. Howard: Okay

Mr. Harvey: So the Committee felt that it was important to have that potential conversion where if you wanted... someone wanted to have their development right changed from residential to commercial it could be done and it was based on four thousand square feet which was our average household size. So again looking at what was the equivalent of square footage of a house.

Mr. Howard: So the potential value of that if it was converted in to a commercial development instead of a residential development.

Ms. Kirkman: Mr. Chair.

Mr. Howard: Yes Ms. Kirkman.

Ms. Kirkman: Did you do it based on value or square footage?

Mr. Howard: Square footage.

Ms. Kirkman: Because what I thought I heard you say Mr. Harvey that you did it on square footage.

Mr. Harvey: That's correct.

Ms. Kirkman: And what's the value of four thousand square feet of commercial property versus the value of a four thousand square foot home?

Mr. Harvey: We did not check into the value of what a four thousand square foot retail space was in relation to a four thousand square house. We did not...

Mr. Howard: The term value is being used one equals value so one equals four thousand, that's why I'm using the term value. In terms of commercial development and Mr. Mayausky if he's still here, I'm not sure. But it's our understanding that commercial development typically will generate more

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revenue for the County, so we said why would we not want it, try to have a program that would allow someone that says hey you know what we think we can do more commercial here or a higher mixed use and in that mixed use their might be more commercial versus residential. How would we apply that if we were truly trying to preserve open space and preserve land in other parts of the County where we didn't desire to see residential development and or any other type of development. So that was how the discussion went. Go ahead Ms. Ansong.

Ms. Ansong: And one of the last changes that was proposed at the Committee meeting, dealt with sending properties. Before it was proposed that in order to be a sending property the parcel had to be comprised of at least twenty acres or designated as park. The proposed change is that... yes that will remain the same but the parcel has to be twenty acres or designated as a park. In terms of the park area, the park needs to... the parkland needs to be comprised of at least two acres. So that's the last change.

Ms. Kirkman: Mr. Chair.

Mr. Howard: Yes, Ms. Kirkman.

Ms. Kirkman: Could you please clarify that Ms. Ansong because I understood that in fact there's no minimum requirement for the size of the parcel as long as any number of parcels are aggregated up to twenty acres.

Ms. Ansong: Before that's what we had where it had to be at least twenty acres or parkland but it was proposed that in terms of the parkland it be at least two acres.

Ms. Kirkman: I'm not talking about the parkland.

Ms. Ansong: Okay.

Ms. Kirkman: I'm talking about the other parcels. Do we still have the same provision in there that you can combine any number of parcels of any square footage or acreage so long as those total parcels equal twenty acres?

Ms. Ansong: Yes, at least twenty acres.

Ms. Apicella: But they would have to be contiguous right?

Ms. Ansong: Yes, contiguous yes we still have that.

Ms. Kirkman: So you can still get TDR's for properties that are half an acre, an acre, quarter acre, as long as those are assembled up into an assemblage that it totals twenty acres.

Ms. Ansong: That's correct.

Ms. Kirkman: Thank you.

Ms. Ansong: Yes.

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Mr. Taves: Mr. Chairman that's on page 18 of the draft Ordinance.

Mr. Howard: Thank you Mr. Taves.

Mr. Harvey: Mr. Chairman there was a couple other technical detail adjustments that the Committee recommended that weren't as significant but one of them was dealing with the calculation of development rights. Right now the formula that's written does not for sending areas have to exclude rights-of-way for public roads. And the Committee felt that that was important to include that because it's treating properties as equals. When staff looked at what is the typical percentage of gross acreage for a property when it's being subdivided that's devoted to right-of-way. And for large lot type of developments it equates to about five percent so we added that percentage in there on page 20 in the draft Ordinance.

Mr. Howard: Thank you Mr. Harvey.

Mr. Harvey: Also there was further clarification on page 22 subparagraph D when it spoke about the sending properties and what they can do after they've sent their development rights. The State Code basically says that they have to be used for agricultural or forestall purposes. And we further clarify that if it's used for forestall purposes, that's with a reforestation plan and that any new buildings to be constructed on the property would be limited to no more than six thousand square feet in size and shall support the agricultural or forestall use.

Mr. Taves: Mr. Chairman can I clarify something on that?

Mr. Howard: Yes Mr. Taves.

Mr. Taves: The... with regard to agricultural and forestall the State Code doesn't provide that sending property after development rights have been transferred has to be used for agricultural or forestall. What the State Code provides is... that's one of these may's again. It may be used, the county may allow it to be used for those purposes or for renewable energy. And as you recall we discussed on Saturday whether we were going to include for example recreational uses and upon final analysis I concluded that because they had listed... the State Code lists agricultural and forestall as uses allowed to be made on the property afterwards after the severance of development rights. That the conclusion had to be that other uses, non-listed uses like recreational couldn't be made on the property unfortunately.

Mr. Howard: Correct. Then we went with your expert legal opinion.

Mr. Apicella: I'm sorry could you re-state that? Just the last couple sentences there. It cannot be used...

Mr. Taves: The State Code provides a may. The county may provide that agricultural, forestall, and renewable energy uses can be made on a property, an ascending property after the development rights have been severed. That's a may. Don't have to, don't have to allow anything but the TDR Committee thought it was a good idea to allow the underlying fee to remain... to have some uses allowed on the property. And what we concluded was... what I concluded was that we couldn't allow, the Committee wanted to allow recreational and I think aqua-cultural also.

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Mr. Howard: In addition to the two that are in the Ordinance, right?

Mr. Taves: Right. And I realized afterwards though that the State Code may only applies to the agricultural and the forestall and it doesn't have those other uses allowed. So there had to of been a reason, maybe it was never decided by the General Assembly, but with the language being the way it is, I just don't think we can go that far.

Mr. Apicella: So, forgive me I am a little bit confused I think then. We're saying that something that's designated as parkland and the Comp Plan can be a sending area. But once they send it you can't use it as a park, because typically a park is recreational.

Mr. Taves: Yes.

Mr. Apicella: So what if the County then takes ownership of the land in some form or fashion can it, would the County then be able to designate it or call it a park or?

Mr. Taves: I don't think it matters who owns the property. Under the State Code again, why the General Assembly didn't say recreational, I can't answer that question. But that may be a good opportunity if y'all think that that's appropriate. The TDR Committee certainly felt it was. But, and it makes a lot of sense, but the bottom line was that they have these certain uses listed as being allowed and it would have been a much stronger argument for recreational if they hadn't listed anything.

Mr. Apicella: Alright, Okay. Thank you.

Ms. Kirkman: I want to clarify when the TDR Committee added... allowing for us... so under the State Statute you could just say once you sever the development rights you have to keep the property as it exists now. Is that correct?

Mr. Taves: It doesn't jump out at you from the State Statute but what the State Statute says in the may section is that you may provide for these particular uses, agricultural, forestall and renewable energy sources.

Ms. Kirkman: Which would imply that unless the local Ordinance does that those uses may not be done. Is that correct? I'm just trying to understand.

Mr. Taves: I think so yes. And that was the conclusion we drew from the State Code itself. Because they listed those three then the county essentially couldn't make up additional uses and go beyond what the State Code provided.

Ms. Kirkman: And forestall uses means logging essentially.

Mr. Taves: And I think the language we have in there is that they have to have a reforestation plan.

Ms. Kirkman: And as I understand the Ches Bay Act when logging is done that they really don't have to comply with the Ches Bay Act. There aren't the same kind of provisions as other types of use land use.

Mr. Taves: Yes I'm not sure about that, I haven't looked into that lately.

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Ms. Kirkman: Thank you.

Mr. Harvey: There are similar but different provisions. Generally forestry can clear down to fifty feet within the resource, except for certain selective cuts may even go closer to the resource. Again, with the proposal that they're supposed to have a reforestation plan associated with that.

Mr. Howard: Well they couldn't do it without having a reforestation plan is what we're suggesting in the Ordinance.

Ms. Kirkman: But they could cut closer to the protected resource and then do the reforestation. So there would be a period where there could be bare soil.

Mr. Harvey: Well generally with the forestry activities they don't remove the stumps and they don't really disturb the soil except for the places where they build an access road and also sometimes where they are dragging out the timber at times that disturbs the soil so those of you that specific examples where you may have some land disturbance. But there is a permitting process through the state for that and the Chesapeake Bay Act also talks about erosion control measures for forestry activities.

Ms. Kirkman: So under our Chesapeake Bay Act you have to go through a process to build a road through a protected resource. Is that true when you are engaging in logging operations?

Mr. Harvey: They have to go through a permitting process with the Corp of Engineers for disturbing wetlands. With the resource protection areas, I'm not sure what the Department of Forestry does with an access road.

Ms. Kirkman: But they don't have to go through the same County processes that everyone else does?

Mr. Harvey: Correct.

Ms. Kirkman: Thank you.

Mr. Taves: And once again these are may's so if the Commission decided that forestall uses are not a good idea then you may not want to include those.

Mr. Howard: Okay, Ms. Ansong. Was there any other highlights, or Mr. Harvey, that you wanted to cover with the group?

Ms. Kirkman: I had some additional questions for whoever would like to answer.

Mr. Howard: Sure Ms. Kirkman.

Ms. Kirkman: The State Statute requires an assessment of the infrastructure in the receiving area that identifies the ability of the area to accept increases in density and its plans to provide necessary utility services within any designating receiving area. I just want to know what provision in our Ordinance does that.

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Mr. Taves: I don't think there is anything in here necessarily that does that. What we did when the TDR Committee, the original joint TDR Committee was meeting, Mr. Harvey consulted with the Director of Utilities and got some information back from them. Maybe he can relate the status of that.

Ms. Kirkman: The reason I ask is it does State Statute the locality shall adopt in and Ordinance that shall provide for, and so that's why I was asking where in this ordinance that shall is addressed?

Mr. Taves: We've been talking about that problem and that's something we'll have to wrestle with. I think you have a good point.

Ms. Kirkman: Since this is a requirement of the State Statute doesn't it need to be in the Ordinance that we're looking at tonight?

Mr. Taves: I think you have a good point.

Ms. Kirkman: And it's not in there, currently?

Ms. Kirkman: And it is not in there currently?

Mr. Howard: Wouldn't the fact that the receiving areas are Urban Development Areas somehow factor into that?

Mr. Taves: There's been somewhat of an evaluation of the infrastructure in the planning and everything. But I think Ms. Kirkman's point is that it's not in the Ordinance itself. And if you read it that way then it would have to be in there.

Ms. Kirkman: And the other question that I had is just prior to that which is number 11, the requirement number 10 is the development rights permitted to be attached in the receiving area shall be equal to or greater than the development rights permitted to be severed from the sending areas. So my question was how many development rights are in the sending area? The proposed sending area and how many development rights are in the proposed receiving area?

Ms. Ansong: Let's see.

Mr. Howard: Mr. Harvey, I think you could answer that question.

Mr. Harvey: Yes.

Mr. Howard: We talked about that...

Mr. Harvey: You may recall from previous information that we provide Commission we had a table of parcels for the sending areas. The sending areas equate to approximately nine hundred and four potential units that could be sent from that area based on our calculations. Based on the zoning densities that are required for the receiving zones we looked at the A-1 and R-1 zoning categories and we created the A-1 zoning category at four units per acre and the R-1 up to twelve units per acre so it could accommodate multi-family. When you look at those numbers it roughly is around one thousand three hundred and fifty units. So it's a much higher number. Part of that again is driven by trying to

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comply with the UDA Statute in providing the densities that are required in the UDA's for single family homes, townhomes and multi-family dwellings.

Ms. Kirkman: So just to back up a minute, you said I think there were nine hundred some in the sending area.

Mr. Harvey: Yes.

Ms. Kirkman: And the UDA at Brooke, which is the receiving area calls for what, eight hundred units?

Mr. Harvey: Eight hundred and seventy.

Ms. Kirkman: So that's less... a lower number of units than is in the sending area and then I've also heard that there is a proposal to cut that in half, which brings it down to four hundred some, which is clearly far below the nine hundred in the sending area. So how can that be in compliance with the State Statute?

Mr. Harvey: We have two receiving areas so when we were looking at those numbers we were taking the total potential for both receiving areas as the potential number of....

Ms. Kirkman: Oh, okay, the Courthouse?

Mr. Harvey: Yes, Courthouse and Brooke.

Ms. Kirkman: Alright, thank you.

Mr. Howard: Mr. Taves.

Mr. Taves: I just wanted to mention, I think the reason they have that in the State Code is they didn't want there to be a whole lot of sending areas and make TDR's an illusory type of issue where you might have a lot of sending areas but there's no place to send them to.

7:30 P.M.

PUBLIC PRESENTATIONS

Mr. Howard: Okay we are at the 7:30 hard mark, this evening we do not have a public hearing but we do open up the meeting at this time for public comment. So Ms. Ansong, I would just ask that you give us that ability to do that. Thank you. And, ask anyone in the audience this evening who would like to address the Planning Commission to do so by stepping forward to the podium. And we just ask you to state your name and your address. When the green light goes on you have three minutes to address the Planning Commission. When the yellow light comes on you have about a minute left and when the red light goes on we would ask you to conclude your comments and allow the next speaker to address the Planning Commission. Again, there is no public hearing scheduled this evening so you may address the Planning Commission on any subject matter that you wish to do so. So anyone

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wishing to address the Planning Commission can run right up to that podium right now. Alright, seeing no one advancing towards the podium I will now close the public presentation portion of this meeting and again conclude that there is no public hearings on the agenda and bring it back to Ms. Ansong so we can continue on item number 1 on our agenda this evening. Mr. Apicella.

1. ***Comprehensive Plan Amendment and Zoning Ordinance Amendment; Transfer of Development Rights (Time Limit: December 5, 2011) (History - Deferred at September 21, 2011 meeting to October 5, 2011) (Deferred at October 5, 2011 to October 19, 2011) (Deferred at October 19, 2011 to November 2, 2011)
(Authorize for Public Hearing by: November 2, 2011)
(Potential Public Hearing Date: December 5, 2011)***

Mr. Apicella: I'm just trying to understand what the protocol is being new to the Commission?

Mr. Howard: You can ask or say anything, I just recognized you. You have the floor.

Mr. Apicella: Well I'll just start by saying I think we had a good meeting on Saturday, we discussed a number of issues. I believe that all the Commissioners got the questions that I sent out to staff as well as the responses. My goal was to see the extent to which the various documents married up the Model Ordinance, the Frederick Ordinance and the Stafford Ordinance. I saw, I believe in the Stafford... the proposed version of the Stafford Ordinance a lot of similarity, the best of the various documents although I found some places where I thought there were some potential opportunities from the State Statute that had not been incorporated into the proposed Stafford version. So hence, some of the changes that we're proposing with regard to the cap on the number of development units per project of fifty per cent. What I heard at the last PC meeting was concern about proffers, and so I tried to come up with an approach that would both incentivize TDR's as well as insure some proffers would occur within the two respective UDA's by limiting the number of developing units that could be sent over to a specific UDA.

Mr. Howard: Hence the fifty per cent. That was the discussion we had this way no one developer can take advantage of the County in terms of securing all the development rights at one time and transferring them and... or buying the transfer rights bringing them into either Courthouse or Brooke, and thus not have to come before anyone and talk about you know other proffer opportunities, so.

Mr. Taves: Excuse me, Mr. Chairman can I... could I, mention something in addition. I'm not sure we mentioned this earlier and it is kind of a large addition. Previously, there were only two zoning districts that were allowed to be receiving areas.

Mr. Howard: Right.

Mr. Taves: I think the A-1 and the R-1. And that was another change as we added a bunch of different zoning districts and I think that becomes pertinent to the issue we discussed at the last Planning Commission meeting. That, if those for example in Brooke, all virtually all the properties zoned A-1 already so you wouldn't need a rezoning for those. But, now if a property owner wants to get a rezoning to one of these, I believe they are mixed use districts, is that correct Mr. Harvey?

Mr. Harvey: That's correct.

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Mr. Taves: Then they would have to get a rezoning and that would offer an opportunity for some proffers.

Mr. Apicella: Just to finish some of my thoughts, I'm sorry Ms. Kirkman. The other big opportunity that we saw was this State Code provision that allowed us to use or to provide development units from sending areas as commercial areas in lieu of residential development units within a UDA. So we saw that as an opportunity to potentially curtail some growth, residential growth that could occur in those two UDA's as well as to bring in additional revenue because commercial as I've heard before, tends to be an opportunity to increase the county's coffers as compared to residential development that in some cases can actually cost the taxpayers at the end of the day. And, the last thing that I'd like to point out is at the last PC meeting there was some concern about not having a minimum amount of acreage associated with the parkland and based on I believe it was the Frederick County Ordinance, it may have been someone else's but we looked at potentially the two acre minimum and we decided that that would be a good threshold for the parkland.

Mr. Howard: Thank you Mr. Apicella.

Ms. Kirkman: Mr. Taves, I just wanted to go back what you said about the concern about the ...

Mr. Howard: Ms. Kirkman you have a question? Ms. Kirkman you have a question?

Ms. Kirkman: Yes, I do, for Mr. Taves.

Mr. Howard: Okay Ms. Kirkman go ahead.

Ms. Kirkman: Mr. Taves, I wanted to go back to what you said about the concern about rezoning but because they've left the A-1 in and not removed A-1 that means that if a developer comes in for strictly a residential component in Brooke that they can proceed with that if they have the development rights without any rezoning, is that correct?

Mr. Taves: That's correct.

Ms. Kirkman: So the only way really to keep that from happening is to remove A-1 from the Transfer of Development Right Ordinance.

Mr. Taves: For Brooke yes.

Ms. Kirkman: Thank you.

Mr. Taves: The other receiving area I believe has more diverse population of zoning districts.

Ms. Kirkman: That's correct, yes.

Mr. Howard: Right, correct. Alright, any other questions?

Mr. Hiron: Mr. Chair.

Mr. Howard: Mr. Hiron.

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Mr. Hirons: Actually, I wanted to see if Mrs. Hazard actually... if we received an answer to Mrs. Hazard's question which she may not have gotten out. But it's related to this commercial transfer. I'm still trying to digest this and we may need Mr. Mayausky to come up and kind of describe how that would be handled of a residential development right being transferred to a commercial development right. But, as it's just in a certificate form, the development right, would it not have to be taxed at the commercial rate which is the what is it highest and best use?

Mr. Howard: So I ask Mr. Mayausky to come back up.

Mr. Hirons: And that adds to a little bit of my question of, how do you determine that because part of your highest and best use description before was location. If it's located next to a Wal-Mart, well the highest and best use is pretty darn high. If it's a commercial zoned property not near much else it's not going to be as high. So how is the certificate of the development right taxed based on this commercial element?

Mr. Mayausky: That's a very good question.

Mr. Hirons: Thank you.

Mr. Mayausky: Having just heard of the commercial component I haven't had a lot of time to digest that. I guess some of it... from my standpoint part of it would be at what point do we know it's going to become commercial? If they all go into the ether, I think somebody used the term earlier. If they all go into the market with the same ability to become commercial or residential then the market should reflect that in their sale prices. If they get designated as commercial or residential at the point they are created, during the certification program, then you'll have two different products in the market and we can track both of those products. So I guess that's a long way of saying I don't know. I think it's all in the details as to how, how and when the commercials created. Now to your other point, to your other question about the highest and best use. I think that will be reflected when that development right lands and where that development right lands. The receiving parcels aren't all created equally. You said the one next to the Wal-Mart is going to be worth more than the one two miles down the street on Route 1. So if you're getting four thousand square feet next to the Wal-Mart, when that development right lands, the value is going to increase beyond the value of that development right. And it will probably increase higher than the one two miles down the road on Route 1 where there... is not as desirable. Does that answer your question?

Mr. Hirons: No, well, sort of but... and I think the new modern hip term would be in the cloud rather than in the ether. But, so I am still lost there on how you would determine the value when it's in the cloud.

Mr. Mayausky: Well there should be transfers.

Mr. Howard: Yes the values determine... To Mr. Mayausky's point, the values determined at the time the transfer of development right is sold. And what is it sold at?

Mr. Mayausky: Yes.

Mr. Howard: At the end of the day they can all be sold at residential if it ends up being a commercial development. The County has a benifit, if you will on the opposite side of that because you have a

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commercial development that has occurred that in all likelihood bring in additional revenue or more revenue we believe than the residential development would have brought to the county. So I don't think there was an intent when we thought through this to start taxing immediately at the commercial value because to your point, Mr. Mayausky, it's an unknown value.

Mr. Mayausky: Yes.

Mr. Howard: But we do know, well you do know what the value of the Transfer of Development right is as a residential development transfer. You'll know about what that would be.

Mr. Mayausky: You will, and again, depending upon when it's determined that it's a commercial right versus a residential right, the market will sort some of that out.

Mr. Howard: And again, the intent wasn't to all of a sudden to tax the receiving property or entity at a high tax rate because all of a sudden they said they want to take these ten and make them commercial development. They may want to do that in the beginning so they'll carry them for a year or two until they start building and then once that brick and mortar hits the ground then all of a sudden the tax base changes for them.

Mr. Mayausky: As that receiving property's accumulating its rights though, it's also going to be reflected in its assessed value. More rights more value.

Mr. Howard: Right, right.

Ms. Kirkman: But could you please clarify Mr. Mayausky how you determine what the highest and best use is since that's what it's taxed on. You've clarified today the property is taxed on its potential not on its current use. So since the potential always exists for one of these development rights to go to commercial why wouldn't it be tax assessed at the commercial value.

Mr. Mayausky: Again, I think that will be determined by the market. If whenever they go into the cloud, they all have the same right to become commercial then I think that will be reflected in the sale price of those individual rights. Because they will all have the equal opportunity to become commercial. That means they'll sell for... that will all be included in its sale price.

Ms. Kirkman: So maybe staff might want to... because this has to do with the sequencing of the process so if staff could help me understand this. So the development right is taxed at the point in which it's severed from the property. What's the point at which the right is severed from the property? When it's created and recorded? Or when it's sold?

Mr. Harvey: When it's created and recorded that's when it's severed from the sending property and when it's expired or extinguished is when it's affixed to a subdivision plat that's recorded or a site plan that's approved with the County in the case of commercial.

Ms. Kirkman: So...

Mr. Harvey: And then we would record another deed to further expire those development rights.

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Ms. Kirkman: So it's severed prior to being sold and if it's severed prior to being sold and your saying that how its tax assessed will be dependent on the value for which it sells, how are you going to assess it when it's been severed before it's been sold?

Mr. Mayausky: It will... hopefully at that point there will be a market. And once it is severed and they've got the certificate it's now worth whether that same property owner owns it or not, it will be worth the same as the other ones that have sold within that market. So it will be valued at that value.

Ms. Kirkman: So how do you value the first ones on the market?

Mr. Mayausky: Now that's a good question! How do you value the first ones on the market? I think what will happen is there... You won't have developers purchasing these development rights and holding them very long. And I don't think you're going to have many property owners severing their rights and holding them waiting for a buyer. I think they are going to happen when some needs a right I think they are going to go out and get them. Because now a lot of them are they're in land use, a lot of these parcels. So it doesn't benefit anybody except the County for them to pull them out of land use and start paying on those development rights because they're not now. As long as they are in land use then nobody's paying on those development rights. So I suspect that as soon as the first one's severed you'll have an immediate sale. Otherwise, what we are going to have to do is we're going to have to fall back on some of the analysis we did for the Purchase of Development Rights Program. Where we had to determine what a development right is worth when we go out and purchase property. Last time we looked it was 2008 and it was about thirty thousand dollars a unit. We can start there, that is at least a starting point if that right gets severed and doesn't sell right away.

Ms. Kirkman: Thank you.

Mr. Howard: Okay. Ms. Hazard.

Mrs. Hazard: I guess as I read this sub-section D when it says, at the discretion of the owner of any residential development rights severed from ascending properties such development rights may be converted to commercial development rights. The owner can be an owner when it's in the cloud. When it is... I guess I'm trying to also determine the point... who gets to convert it and when? I don't know if that's just... and I guess I'm trying to figure out and I'm sure you know there's a reason that it's clear. I'm just trying to figure out is it the person that severs it at that moment says I want to be able to make it commercial or somebody comes along and says I want to purchase it because it says the owner. Then when it's purchased the person makes it, because to me, I might purchase it as a residential but it's at the discretion, I'm just trying to understand that... well you'll have to understand it more than I will. But sort of when that discretion and when that takes place and I may just be trying to follow how that works of who gets to decide when. So, that's just something probably from a... and there may have been some thinking in the Committee about that but I was just trying to pick apart how that works.

Mr. Taves: I think the way we wrote it up was that... as Mr. Mayausky was saying, it's not like there are two different products out there. There's one product and it's a Transfer of Development Rights certificate, that you can either hold in the cloud or you can transfer automatically, you know at the simultaneously with the severance. But if you read that language in paragraph D, it talks about and the owner wishes to convert those residential development rights to commercial development rights. So it

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would seem as though that's when the conversion actually takes place but certainly the value may or may not be enhanced before that because it gives you more options.

Mr. Howard: Okay, thank you.

Ms. Kirkman: Mr. Chair.

Mr. Howard: Ms. Kirkman.

Ms. Kirkman: I have an additional question for Mr. Mayausky. Mr. Harvey explained to us that they came out with a one development right equaling four thousand square feet of commercial based on the average house size in Stafford County. Has it been your experience that one square foot of residential improvement, the tax assessed value of that is generally equal to one square foot of commercial?

Mr. Mayausky: I was sitting back there trying to think of an answer to that question. I have the answer right upstairs in my office I'd be happy to go grab a spreadsheet with some of the work that I did on the Clift Farm property. But I think there are two questions there, one it's not only the value but it's also gets back into the cost of services argument. But I've got... we broke that down pretty detailed when I was looking into Clift Farm and I'd be able to answer that question tonight but I don't have that with me right now.

Ms. Kirkman: Sure not specifically, but generally speaking is the square footage of commercial equal, the value of commercial equal to residential, the tax assessed value?

Mr. Mayausky: And I'm not trying to be weaselly with the answer, it depends on the type of commercial. It may that retail, they may be comparable or the house value may actually be more. If you get into office buildings then most likely the office building is more. So it's really dependent upon the type of commercial that is built. But when we're looking at the break even cost for residential and commercial it really got into not only the assessed value but also the demand for services. And those were the two components that really determined whether or not it was a good deal for the County to go residential or commercial.

Ms. Kirkman: So there's been some financial analysis other than just the square footage of a house versus commercial.

Mr. Mayausky: Well I've certainly looked at it...

Ms. Kirkman: But I mean for the purposes of this Ordinance?

Mr. Mayausky: I don't know, I was not part of any.

Mr. Harvey: No there's not been any discussion at the Committee level about any comparative analysis for the residential versus commercial.

Ms. Kirkman: Alright, thank you.

Mr. Taves: Mr. Chairman.

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Mr. Howard: Yes, Mr. Taves.

Mr. Taves: I would also like to point out that this is a fairly unique situation in that the commercial units that we would be talking about, the commercial square footage is not commercial square footage that you're allowed to build but you weren't allowed to build it the day before. You weren't allowed to build any. It assumes that you already have the right to build some commercial and this would be additional commercial. And so that's the....

Mr. Howard: Correct, right.

Mr. Taves: ... same nature of TDR's with regard to residential. You have to have the right to build the residential first and then this is kind of an add on. I don't know whether that would make any difference in your analysis but I just wanted to point that out.

Mr. Mayausky: I don't know, you could run the possibility of flooding the market I mean when you really get into, if it was that easy to create commercial property and you're only going to build as much commercial as the market demands. You could be affecting the overall value of the commercial property. I'm just kind of thinking now I should probably stop.

Mr. Howard: Mr. Fields.

Mr. Fields: To follow up with that so the logic there on residential is you can only receive a development right into an area that already has some ability to use by-right what you are transferring in. In other words, if you, our initial thing before we added this commercial component, the land that is the receiving area already has to have some by-right ability to build residential units. It can't be industrial property that has no right to be residential and you magically transfer into development.

Mr. Taves: That's my understanding, yes.

Mr. Fields: So with the commercial then, the commercial transfer is also dependent upon you can only transfer in the case of this Ordinance you would only be transferring in then to say the T&D type of zoning. You couldn't transfer a commercial right onto an A-1 or R-1 zone.

Mr. Taves: Correct, you have to comply with the Zoning Ordinance.

Mr. Fields: So the Zoning Ordinance... if there was a decision to use a development right, as for a commercial rather than residential it would have to be transferring into an area that already had some commercial component by-right.

Mr. Taves: That's my understanding.

Mr. Fields: Okay. Which right now, of course Brooke does not have only the Courthouse has.

Mr. Howard: That's right.

Mr. Fields: And I'm not sure, hmm...

Mr. Taves: But that goes back to...

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Mr. Fields: You can't take a... Can you... I would have to... we don't have commercial property as receiving areas so it would only apply...

Mr. Taves: No we do.

Mr. Fields: We do?

Mr. Taves: That was the part of the yellow right here. That's the part here that I mentioned about the mixed use districts.

Mr. Fields: Mixed use but we don't have like B-1 or B2 as a receiving area?

Mr. Harvey: That is correct. They are not...

Mr. Fields: So the commercial component if it was used as a transfer, the commercial would only be in the context of an urban...

Mr. Howard: Mixed use development. Right, which I think we stated earlier.

Mr. Harvey: Correct Mr. Fields and we modified the tables to reflect two things. One for residential density changing it to reflect what the UDA statute requires as far as density. And also for the floor area and open space ratio we modified those again to accommodate for the potential to have more commercial through this TDR than you would normally see in the standard zoning regulations. So we increased the floor area ratio to accommodate that potential extra square footage and also potentially decrease the open space ratio requirement.

Mr. Fields: Thank you.

Mr. Howard: Thank you.

Ms. Kirkman: I have a question for Mr. Taves.

Mr. Howard: Ms. Kirkman.

Ms. Kirkman: I don't have any further questions for Mr. Mayausky.

Mr. Howard: Thank you Mr. Mayausky.

Ms. Kirkman: Mr. Taves I just want to make sure I understand correctly that one of the mays on page 177 and what you gave us is that the locality may require that the review of an application by the Planning Commission to determine if the application complies with the provision of the TDR Ordinance. Is that correct?

Mr. Taves: Yes, that's paragraph 9.

Ms. Kirkman: Okay, thank you.

Mr. Howard: Ms. Hazard.

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Ms. Hazard: I guess I just did want to comment and thank staff for getting the information from the school district. Actually that was actually very helpful and I was just curious with the Committee that met on Saturday taking that into account some of the comments from the school district did that also lead into the potential to convert these into commercial as opposed to just residential.

Mr. Howard: It was part of the discussion and honestly we thought that the analysis the school provided was just that and analysis at a point and time. And based on sort of what is today with the schools capacity so we, you know we did think through that and I wouldn't say that was the sole reason but it certainly was one of the issues that came up during that discussion. Good question. Any other questions from anyone other than the audience? Okay hearing none, thank you Ms. Ansong I appreciate it. And by the way thank you very much for showing up at 7:00 a.m. on Saturday morning, and Mr. Harvey and Mr. Taves as well and Mr. Apicella. That was the time we could fit it in and it was a long four and a half hour meeting. So I appreciate that, thank you. Mr. Apicella.

Mr. Apicella: Again, I'm still trying to work my way through the appropriate protocols. What I heard was a good suggestion to add to the PC version of the Ordinance a definition for retirement of development rights. Is that something we can do right here?

Mr. Howard: Yes we... you can make a motion to do that. If it's seconded we can talk through that and even define what that is or you can define what it is first. Or what you think it is or get consensus from the Planning Commission on what that definition might be.

Mr. Apicella: I'd like to ask for our Attorney.

Mr. Howard: So if we ask Mr. Taves for a recommendation on defining the word retirement as it is being used in the proposed Ordinance.

Mr. Taves: Was that the question?

Mr. Howard: Yes.

Mr. Taves: As I said earlier I think the word retire development rights is essentially the same for all intense and purposes as extinguishment of development rights. And quite frankly I'm not sure... I don't think that you really need to have a definition for that. But if you can if you wish to have one you can certainly have one.

Mr. Apicella: Well I would think at a minimum it would be the first part of what's contained in extinguishment of development rights not the second part. So the process by which development rights from the sending property are severed and extinguished from a sending property and not the part that follows from there. Because you are not transferring anything.

Mr. Howard: What page you on Mr...

Mr. Apicella: I'm on page two.

Mr. Taves: The one thing I would note for ya'll is there's not to make things real complicated but there is yet a third provision that relates to the same issue that we're talking about and that's one of the reasons why I also don't think it's necessary. The... when you get to the end of the process, once

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development rights are attached to a receiving property the Director of Planning and Zoning then gets that TDR certificate and basically invalidates the development rights. This is on page 27 of the draft Ordinance, paragraph D and the Director of Planning and Zoning then invalidates the TDR certificate that created those rights. So, all those things mean the same thing as far as I'm concerned.

Mr. Apicella: That notwithstanding I mean I think it would be helpful to have, as suggested by Ms. Kirkman, a definition on the retirement a development rights so there's no confusion about what's meant in that particular provision that it's associated with .

Mr. Howard: Is that the right answer, or would you define what already is in definition and add the term retirement.

Mr. Taves: Well technically there's no phrase in the draft Ordinance that says quote retirement of development rights.

Ms. Kirkman: Retire.

Mr. Taves: Right, the language says that when you have that tax abatement that serves to retire the development rights.

Mr. Rhodes: You're going to change that word to be extinguished?

Mr. Howard: Right, so should we change... that's really the question, should we change that word to the word that's already defined? In both cases or both places? Or add those two words to where you have defined extinguished. I think the difficulty you have if you if... well I'll put my lawyer's hat on for a minute. The phrase that is defined in the Ordinance is extinguishment of development rights. So I think what you could do if you wished is to say... instead of coming up with a new definition is just to change the word retire to extinguish. Now where we got that from was that's the word they used in the State Code.

Mr. Howard: From the State Code, exactly.

Mr. Taves: But from a legal perspective I don't think it makes one bit of difference whether you use the word retire or extinguish. And if you use the word extinguish, because the term that is defined is extinguishment of development rights that define term would not apply in this situation. So we don't have the difficulty I think that Commissioner Apicella brought up earlier.

Mr. Howard: Okay.

Ms. Kirkman: But then you have an undefined... what it means... you are just substituting one undefined word, extinguished for another undefined word, retire.

Mr. Taves: Well when you're drafting an Ordinance if you took the position that you needed to define every word in the Ordinance you would have an Ordinance that's two hundred pages long.

Mr. Howard: Or longer.

Ms. Kirkman: But we do have some Attorneys in the County that have come pretty close to that.

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Mr. Taves: I think they'd have a difficult time though saying well I don't know what retire means or I don't know what extinguish means. That's just my point, and taking that argument to its logical conclusion if you tried to define literally every word in the Ordinance, you probably would never get to the point where you had agreement on... that everything been covered.

Mr. Howard: Yes I know that's a good point. The word may and the word shall aren't defined either, so.

Ms. Kirkman: Mr. Taves could you explain does it create a problem to simply say retire development rights and do as my colleague suggested, defined retire development rights and define it as the process by which development rights from a sending property are severed and extinguished, period. Does that create any difficulty?

Mr. Taves: Yes.

Ms. Kirkman: What's the difficulty?

Mr. Taves: Because the retire that we're using, the only time that's used is in the context of the tax abatement, that's the only time that word comes up.

Ms. Kirkman: That's correct.

Mr. Taves: I did not do word search but I've read, I've read the Statute and the Ordinance numbers of times and that's the only time that comes up. So that's the only word that you're defining and it's actually it's not the severance that we're talking about it's the extinguishment. Now that's why I say if you just take the word retire and put extinguish in its place, I think you achieve the same objective.

Mr. Howard: Mr. Apicella.

Mr. Apicella: Okay, so again I would move to add a definition for the term retire as the process of extinguishing a development right from a sending property.

Mr. Howard: Is there a second?

Mr. Apicella: That retirement means the process by which development rights from a sending property are extinguished.

Mr. Rhodes: It's not retirement, it is retire.

Ms. Kirkman: Retire.

Mr. Apicella: Retire, I'm sorry. Yes.

Ms. Kirkman: I'll second that.

Mr. Howard: Any discussion Mr. Apicella.

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Mr. Apicella: Again, I appreciate the concern raised that it's a word used only once in the entire State Statute and now in our Ordinance. And again to avoid any confusion down the road and any misinterpretation, I think it would be helpful and I don't see a down side to adding a definition for that one term.

Mr. Taves: What I would recommend is a little re-phrasing, slight re-phrasing... means the process by which development rights are extinguished.

Mr. Apicella: I'm good with that.

Mr. Howard: Alright so Mr. Taves cannot make that friendly amendment he's only advising us as a parliamentarian should there be a future issue. So would anyone want to move that that would be a... either you can amend it or you can ask Mr. Apicella if he takes that as a... would he take that wording as a friendly amendment, if he would repeat the wording.

Mr. Taves: Define retire to mean the process by which development rights are extinguished.

Mr. Apicella: I'll accept that as a friendly amendment.

Ms. Kirkman: As the seconder, I will do the same.

Mr. Hirons: I think it had to be made by a member of the Commission...

Mr. Fields: I think so too.

Mr. Hirons: I'll make that.

Mr. Howard: Mr. Hirons will make...

Mr. Hirons: I will make a motion...

Mr. Howard: Well not a motion. Will you ask Mr. Apicella if he will he accept that wording.

Mr. Hirons: Will you accept that wording as a friendly amendment?

Mr. Apicella: Yes I will. Thank you.

Mr. Howard: And the seconder accepts?

Ms. Kirkman: Yes.

Mr. Howard: Ms. Kirkman, okay. Alright any further discussion? All those in favor signify by saying Aye.

Mr. Apicella: Aye.

Ms. Kirkman: Aye.

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Mr. Rhodes: Aye.

Mr. Hirons: Aye.

Mrs. Hazard: Aye.

Mr. Fields: Aye.

Mr. Howard: Aye. Opposed nay. Motion carries 7-0

Mr. Apicella: Mr. Chairman, my colleague, Ms. Kirkman also identified an area that needed to be included in the Ordinance it's on page 176 of the State Code. I believe it's B-11, I believe it should be added in its entirety to the appropriate place, in the appropriate place in the Ordinance.

Mr. Howard: Mr. Taves do you have an opinion as to where that would appear?

Mr. Taves: I don't. I don't have an opinion as to... I haven't looked at it to say it ought to be in this section or that section.

Mr. Howard: Mr. Apicella do you have an opinion on where you'd like to see that?

Mr. Apicella: Perhaps somewhere in Section 28-358 that speaks to receiving properties.

Mr. Howard: How long is the State Code portion of that? Is it...

Mr. Apicella: It's just one long sentence.

Mr. Howard: Why don't you read it then?

Mr. Apicella: An assessment of the infrastructure in the receiving area that identifies the ability of the area to accept increases in density and it's plans to provide necessary utility services within any designated receiving area.

Mr. Howard: Okay. And you're recommending what section again?

Mr. Rhodes: That would be section....

Mr. Apicella: Section 28-358 Receiving Properties.

Mr. Taves: I think that makes more sense than any of the others.

Mr. Rhodes: Added as a sub-paragraph 5 under paragraph A.

Mr. Howard: Sub-paragraph 5 under...

Mr. Rhodes: Paragraph A.

Mr. Howard: Paragraph A.

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Mr. Rhodes: Paragraph A immediately under 28-358 sub-paragraph 5.

Mr. Howard: Right under designated as part of UDA of the Comprehensive Plan. Okay. So would you like to make that motion Mr. Apicella?

Mr. Apicella: So moved.

Mr. Howard: Is there a second?

Mrs. Hazard: Second.

Mr. Howard: Discussion? No discussion? Okay.

Ms. Hazard: I'm just trying to get the language so it tracks because the beginning of A says such properties shall be... I'm just trying to reformulate that, I think it should be section 5. I'm just trying to get the language. Give me just a moment as well. Mr. Apicella I was wondering if it should read as the end of A, such property shall be and then you move down to section 5, included in an assessment of the infrastructure in the receiving area that identifies the ability... because otherwise the sentence does not track.

Mr. Apicella: Okay.

Ms. Hazard: If that makes sense.

Mr. Howard: So you...

Mr. Rhodes: Modify the lead in.

Ms. Hazard: Modifying the lead to 11 saying an assessment it needs to be included in an assessment or something because that otherwise the sentence doesn't make any sense.

Mr. Howard: Let's amend it correctly. Let's state it...

Mr. Rhodes: Add the words included in to the start of paragraph B-11 from page 176 of the State Code.

Mr. Howard: Alright so do you accept that friendly amendment Mr. Apicella?

Mr. Apicella: I do.

Mr. Rhodes: And Ms. Hazard?

Mrs. Hazard: I do.

Mr. Howard: Can we restate that for the record please?

Mrs. Hazard: Sure, that a new Section A-5 will be added in Section 28-358 to read included in an assessment of the infrastructure in the receiving area that identifies the ability of the area to accept

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increases in density and its plans to provide necessary utility services within any designated receiving area.

Mr. Howard: Okay. Any discussion? Any additional discussion?

Mr. Taves: Just to clarify, so we're just changing the lead in language to that and everything else is going to be verbatim in the Statute?

Mr. Howard: Alright, hearing no other discussion amongst the Planning Commissioners, I now call for the vote. All those in favor of the motion on the table signify by saying Aye.

Mr. Apicella: Aye.

Mrs. Hazard: Aye.

Mr. Fields: Aye.

Ms. Kirkman: Aye.

Mr. Rhodes: Aye.

Mr. Hirons: Aye.

Mr. Howard: Aye. Opposed Nay? Motion carries 7-0. Mr. Apicella.

Mr. Apicella: That's it for me.

Ms. Kirkman: Mr. Chair.

Mr. Howard: Yes.

Ms. Kirkman: I'm going to make a motion to amend the Planning Commission proposal in Section 28-361, regarding sending property certification. Specifically in sections A and B. I am making a motion to amend those sections to delete the Director shall be responsible and instead insert the Planning Commission shall be responsible for determining whether a proposed sending property meets the qualifications of the code.

Mr. Howard: Is there a second?

Mr. Fields: Second.

Mr. Howard: Discussion?

Ms. Kirkman: Mr. Chair, I made that motion because in fact right now this entire process could take behind closed door without an adjacent property owner ever even knowing that this was being considered for a property next to them. And by making it a part of the public Planning Commission agenda there will at least be some sunshine on this issue.

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Mr. Howard: Mr. Fields.

Mr. Fields: Just I concur. You want to make sure that the public always has equal... has open and transparent access to this kind of thing. You know these decisions even well intentioned and even good land use decisions have far reaching impacts that everybody needs to understand.

Mr. Howard: Mr. Hirons.

Mr. Hirons: Mr. Chair I have a question I believe for the motion maker if I may? I understand the issue and I don't disagree with it necessarily. But, I'm a little bit concerned about what the cost of that would be and the benefit because if your selling your development right you're not going to be changing your property at all. What's the benefit to notifying the adjacent property owners?

Ms. Kirkman: First off there's no requirement for notification of adjacent property owners. So like many things in Stafford County you're going to have to spend a lot of time trying to pay attention to what's going on in public meetings. Where it would probably be most appropriate is not so much from the sending property but to the receiving property. And people in properties adjacent to the receiving property might want to know that the A-1 property that they thought was only going to have one house per three acres could be developed in a much denser rate without any public process whatsoever.

Mr. Apicella: Mr. Chairman we talked a good amount about a notice requirement.

Mr. Howard: We did.

Mr. Apicella: And I think the way we ended up is rather than putting something in the Ordinance itself that there would be a robust effort established by the Planning Department to number one, identify for the public both sending and receiving areas and also to stimulate the use of the program. And even in a broader context so it would be a robust land preservation program that spoke to conservation easements, TDR's, PDR's, but again at a minimum those people who would be affected by sending and receiving areas would as a result of this administrative process be told that those specific areas were being designated.

Ms. Kirkman: Mr. Chair.

Mr. Howard: Yes Ms. Kirkman.

Ms. Kirkman: I believe the most robust process of course is the notification process through certified mail. It's unclear to me whether or not we have the authority to require that under the State Statute. However the Attorney has confirmed to us that we do have the ability to implement the second most robust process which is a public meeting. And that public meeting is through the Planning Commission review of this.

Mr. Taves: Mr. Chairman, can I point something out?

Mr. Howard: Sure Mr. Taves.

Mr. Taves: I just want to make sure the Commission knows that this process that has been laid out in the TDR statute, it's an administrative process. And there's no discretion at the review process or at

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the approval process of allowing TDR's. I mean the Commission for example couldn't decide that well I know that this is a receiving property but I don't think we should allow this transfer to take place. And the State Code makes it very clear that it's administrative, it's kind of a non-discretionary type of thing. And there isn't any provision in there about public notice to individual property owners. Certainly every Planning Commission meeting is held in public. So to that extent you're right. But I just want to make sure that the Commission considering that proposal knows that it is an administrative process and it's not one where you'd have a lot of ability to say no if all of the requirements are satisfied.

Ms. Kirkman: Sure, so Mr. Taves it would be very similar to the subdivision review that the Planning Commission does now which is an administrative process.

Mr. Taves: Well let me ask you this. Does the Commission review all subdivision plats?

Ms. Kirkman: It does, yes except for minors and families.

Mr. Taves: Well then I'm thinking that you probably already have that review in terms of people knowing what's happened because as Mr. Harvey mentioned earlier, the way those development rights get attached to another property is by way of a subdivision plat or site plan. Is that accurate Mr. Harvey?

Mr. Harvey: That's correct. So the Planning Commission would have note, when they review a preliminary subdivision plan that there are so many dwelling units are being proposed through Transfer of Development Rights. The site plan aspect does not come to the Planning Commission, it's strictly a staff review.

Mr. Taves: So that would be the commercial.

Ms. Kirkman: That would be the commercial and in addition to that that's much further down in the process where an adjacent property owner really might want to know about it a little earlier than that. And I always believe that more public transparency is better than less, which is why I made the proposal, the motion to amend.

Mr. Howard: Okay. Alright is there any other discussion on this?

Mr. Rhodes: Mr. Chairman I just would state that I will not be supporting that motion. Thank you Mr. Chairman.

Mr. Howard: Okay, Ms. Hazard any comment? No, okay.

Mr. Hirons: Before we do vote can I ask Ms. Kirkman to repeat the motion or chair?

Ms. Kirkman: Sure the motion is to amend Section 28-361, Sections A and B to substitute the word Director for... substitute the word Planning Commission for the word Director.

Mr. Fields: Just in A and B correct?

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Ms. Kirkman: Just in A and B that's correct, because the remaining things are around maintaining documents.

Mr. Taves: Can I ask a question? My understanding from your explanation Commissioner Kirkman, is that you wanted the public to be involved when that... those development rights were to become attached to a receiving property and I think if you put it in the sending property area which is the 361, what you're talking about there is when the development rights are severed not when the development rights attach to properties. So you may want to... if you were going to put it in an area you may want to consider it in the receiving area as opposed to sending area.

Ms. Kirkman: But is there... well this is what I was trying to figure out is there a part... as far as I could tell, that's the only point where the Planning Director has a role in the process. And based on the States Statute that's the only point where the Planning Commission can have a role is in reviewing whether or not it meets the requirements... the qualifications. So, that seemed to be the only place where it could go if there was to be Planning Commission role.

Mr. Taves: Well the Director issues the what we call here the Determination of Development Rights Document. And that is when an application or request is made by a property owner to have it determined how many development rights he or she may have on a particular piece of property. And once they get that Determination of Development Rights Document that will give them a number they'll know what they can do and then they can make a decision from there. In terms of requesting the issuance of a TDR certificate, and that's when the severance would take place so if you're interested in the Commission getting involved in whether or not a piece of property or development right could be severed, then that would be the place where you're proposing. But if you're interested in having the Commission look at the... later in the process then you may want to reconsider that.

Ms. Kirkman: Mr. Taves, my interest is in making wherever we can this process public and transparent. My understanding based on the State Statute which states, the review of an application by the Planning Commission to determine whether the application complies with the provisions of the Ordinance. I'm assuming of course that means an application for the...

Mr. Taves: Severance.

Ms. Kirkman: Severance of the developments rights.

Mr. Taves: That's fine.

Ms. Kirkman: If you think there's a way to also do it around the receiving property that would be wonderful. I would love to hear how we can do that based on the State Statute.

Mr. Taves: Well again, I think they're all administrative. We... I think the reason why you're not seeing the Director pop up a whole lot, although he is involved in the process all the way from birth to extinguishment if I may. At that point, somebody has the TDR certificate so it just depends at what point the Commission wants or... on how many occasions the Commission wants to be involved in the process. The Director is involved all the way through at the severance and at the when somebody approves or somebody has the development rights attached to a receiving property and he takes the TDR certificate and extinguishes it.

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Ms. Kirkman: So based on your read of the State Statute do you think the Planning Commission can also be incorporated in the review of the appropriateness or the qualifications in terms of attaching to a particular receiving property. Because I didn't see that in there and if it's in there that would be great.

Mr. Howard: Okay we are still in discussion so while Mr. Taves ponders the question by the motion maker. 28-361 says sending property certification and on A it says the Director shall be responsible for determining whether a proposed sending property meets the qualifications of County Code 28-357. The Director shall respond in writing to an owners request for a determination of development rights documents under this article within sixty days of the date of submission of a complete TDR application. The motion as I understand it would then require somehow this applicant along with the Director to come before the Planning Commission within that sixty days. Which, I'm not sure that can occur.

Ms. Kirkman: Well sure, we could... if you would like to offer an amendment that says staying within sixty days of the date of the submission. You could say sixty days of the first meeting of the Planning Commission following the date of submission. That's typically I think how some of our subdivision reviews work.

Mr. Harvey: That's correct.

Mr. Howard: Well, I'm not going to support it but I wanted to point out that I think that it sounds like it's creating an incredible amount of work that's probably not necessary because we are ultimately going to find out when the development comes in for approval whether there was transfer development rights that were converted to commercial or these transferred development rights stayed as residential and where they apply to within the particular either subdivision and or general development plan that's being proffered and shown to us so I'm not sure why we need to see it twice.

Mr. Apicella: Mr. Chairman I agree with your concerns. I believe it's covered under Section 28-364 Development Approval Procedures. So I think it would be redundant for us to add another notice requirement.

Ms. Kirkman: Well Mr. Chair I respectfully disagree with those positions. I think transparency in government in decisions is never too troublesome.

Mr. Howard: Well we all agree but to see it twice doesn't seem like its logical. Mrs. Hazard.

Mrs. Hazard: I guess I was also looking at the 28-364. It appears to me when you read that Section that the request to utilize the transfer of development rights on an eligible receiving property must be in the form of a preliminary subdivision plan. Thus, as part of that plan, and I'm just thinking out loud, Mr. Harvey please correct me. A request to use those rights must be submitted at the same time as that plat is submitted for approval. It is not a done deal. They have to request it at that time as well. Is that correct?

Mr. Harvey: That is correct in the way I would administer is that they would have to identify how many lots they had without TDR and then how many TDR certificates they are going to utilize and which ones. So when they go to record the final subdivision plat we can further extinguish those development rights once the plats recorded.

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Mrs. Hazard: Would that request be included in the notice that would go to the adjacent owners that would be notified for the preliminary subdivision plat in any case. Or could it be I guess would be the question. Excuse me that the applicant coming before them is requesting use of transfer of development rights.

Mr. Harvey: We could incorporate that into the notice, we'd probably need to modify the Subdivision Ordinance to reflect that just to make sure so the notice letters pretty much follow what our Code says as far as the wording. The development plans been filed with the County and you have five days to comment on prior to the Planning Commission's action. But right now we don't distinguish specifically how many types of units and the number of units within that notice. We could if we change the Code to specify that.

Mrs. Hazard: Potentially, and without having the Code right in front of me, saying that since this is going to be potentially a new Ordinance that any... that the notice given under the Subdivision Ordinance that impacts or utilizes TDR's would at least have a sentence or something to that affect in that notice. I know we'd have to go and find out all the places but that would be at least a way to provide the notice that I think we would like on the receiving end.

Mr. Howard: Mr. Taves I know you seemed like you were ready to have an answer and then...

Mr. Taves: I think the question... the way I take your question Commissioner Kirkman, is whether the word application is solely applicable to a request to sever development rights. The Statute doesn't make that clear and I kind of view the word application broadly. You would essentially have two different applications. One application is when the property owner comes in and asks to sever the development rights asks for the determination of development rights document and submits and application to sever those rights. So that's one. Whether you call it an application or a request that's when the holder of the development rights, not necessarily the property owner who severed them in the first place asked to have them attached to the receiving property. And, so I kind of view that word broadly, the way we use the word application in the Ordinance is with regard to the severance. But the reason I brought up the issue of the receiving property is because you were basing your rationale for having that go to the Planning Commission to allow property owners nearby to know ahead of time that there would be increased development rights or increased development in their area. On the other end of it with the sending property in essence if the County whether it be the Commission or the Director approves that application, you'll have less development in that area.

Ms. Kirkman: Yes Mr. Taves, I appreciate that you understood my primary concerns regarding the receiving areas. However, I also believe in transparency in government and I do believe that when development rights which essentially under cut and make the proffer system obsolete are created that the public should have a right to know each and every time that that occurs. And I believe the best way to do that is through public meeting process. So while I appreciate you pointing out that we can also amend other sections of the Ordinance based on your interpretation and I'll certainly go on to make a motion to do that. My original motion stands.

Mr. Rhodes: Mr. Chairman.

Mr. Howard: Yes Mr. Rhodes.

Mr. Rhodes: I call for the question.

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Mr. Howard: Alright there is a call for the question. So now we will take a vote on whether or not discussion ends on this... or debate I should say ends on this motion. So again you are voting not on the motion you are voting on whether or not the debate would end and then we would take a vote on the motion that's on the table. All those in favor of the motion on the table right now which is to call the questions simply by saying Aye.

Mr. Rhodes: Aye.

Mr. Hiron: Aye.

Ms. Hazard: Aye.

Mr. Hiron: Aye.

Mr. Howard: Aye. Opposed Nay?

Ms. Kirkman: Nay.

Mr. Fields: Nay.

Mr. Howard: The motion carries 5-2. All those in favor of Ms. Kirkman's motion, and Ms. Kirkman would you mind restating the motion please?

Ms. Kirkman: My motion is to amend Section 28-361 sections A and 2 to substitute Planning Commission for Director. So that for instance the first sentence shall read the Planning Commission shall be responsible for determining whether a proposed sending property meets the qualifications of County Code Section 28-357.

Mr. Howard: Mr. Fields you agree that's the motion?

Mr. Fields: I do.

Mr. Howard: Okay, all those in favor of Ms. Kirkman's motion as articulated by Ms. Kirkman just a moment ago please signify by saying Aye

Ms. Kirkman: Aye.

Mr. Fields: Aye.

Mr. Howard: Opposed Nay?

Mr. Hiron: Nay.

Mr. Rhodes: Nay.

Mrs. Hazard: Nay.

Mr. Apicella: Nay.

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Mr. Howard: Nay. The motion does not carry 2-5.

Ms. Kirkman: Mr. Chair since Mr. Taves pointed out we do have the ability to play a greater role than I thought possible under the State Statute. At this point, I'm making a motion to amend Section 28-364 to add a section A and subsequently re-number the following subsections and sections A shall be that an application to apply transfer development rights shall be made to the Planning Commission.

Mr. Howard: Is there a second?

Mr. Fields: Second.

Mr. Howard: Any discussion?

Ms. Kirkman: Again, particularly in this regard this is about the receiving properties and so again it's about creating a public process and making sure the adjacent property owners are aware of it.

Mr. Howard: Mr. Fields?

Mr. Fields: Nothing to add.

Mr. Howard: Okay, any other discussion? Hearing none I'll call for the vote, all those in favor of Ms. Kirkman's motion signify by saying aye.

Mr. Fields: Aye.

Ms. Kirkman: Aye.

Mrs. Hazard: Aye.

Mr. Howard: Opposed Nay?

Mr. Apicella: Nay.

Mr. Hirons: Nay.

Mr. Rhodes: Nay.

Mr. Howard: Nay. Motion does not carry 3-4.

Ms. Kirkman: Mr. Chair I have another motion to make and my motion is regarding Section 28-35 Table of Uses and Standards.

Mr. Howard: Okay.

Ms. Kirkman: You folks have got that and my motion is to remove TDR's as a by-right use in A-1 and to remove all the related subsections regarding that.

Mr. Fields: Second.

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Mr. Howard: Second by Mr. Fields. Discussion?

Ms. Kirkman: Yes, Mr. Chair I made this motion because the whole concept of TDR's is to move development off of rural areas which in Stafford County we call agricultural. So it makes absolutely no sense to have transfer development rights to agriculturally zoned properties. I do believe a step was made in the right direction by adding the more appropriate land uses. For instance, the PT and D which is the mixed use development. It makes absolutely no sense to include agricultural in this.

Mr. Howard: Mr. Fields?

Mr. Fields: I couldn't agree more, agricultural as a by-right receiving area is really pretty antithetical if you look across the country and across the time that TDR's have been used and applied and used effectively in many locations. The simple truth is if you A-1 zone property that you want to be a receiving area then you have to rezone it to an appropriate receiving zoning category. To allow it to remain A-1 with this increased density of four dwelling units per acre but still have the A-1 designation, believe me will lead to far more, I think of complicated and very unworkable situation. Plus it completely negates the ability to negotiate the terms and I sometimes hate to use the word collect proffers because over twelve years I've not always been a fan of the proffer system. I don't want it to sound like rezoning always about extorting money from the developers. What they are is an opportunity to have a very complex and involved public discourse about the nature of land use changing from one to the other. And this completely precludes that.

Mr. Howard: Any other discussion? I would just want to point out that during our debate at the meeting we had on Saturday. You know this did come up and we're not looking to allow people to circumvent the process or the system but and that's where the fifty percent, you know came up by development. This way there would in fact be some type of review and a developer would be required to come before the Planning Commission and we'd still quote, get our bite of the apple at that time. While you could argue well they'll have certain rights to build certain number of units well that in fact would be true but at the same time the tradeoff is we know we're preserving and perpetuity some open space and some great areas of the County that everybody would like to see occur. So I just point that out as the... some insight to the discussion that we had as we talked through that as a group on Saturday. Any other discussion? Hearing none I'll now call for the vote. All those in favor of the motion on the table signify by saying Aye.

Ms. Kirkman: Aye.

Mr. Fields: Aye.

Mrs. Hazard: Aye.

Mr. Howard: Opposed Nay?

Mr. Apicella: Nay.

Mr. Rhodes: Nay.

Mr. Howard: I believe that was again 4 to 3... 3 to 4, right? Is that correct?

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Mr. Rhodes: Yes.

Mr. Howard: Okay, alright.

Mr. Rhodes: Mr. Chairman.

Mr. Howard: Yes.

Mr. Rhodes: I make a motion that we forward for public hearing the modified Ordinance O11-25 as discussed tonight with the addition in Section 28-25 that we had already voted on and for the definition of retire and the addition that we had already voted on page 19 as discussed adding under 28-358, a section A sub 5 as also voted on. But I make a motion that we send that forward to public hearing.

Mr. Apicella: I'll second that.

Mr. Howard: Discussion?

Mr. Rhodes: Mr. Chairman I would just like to thank the Committee for their work for the time they spent in really working to take this even further. I appreciated the effort previously to try and pull the best elements out but the thought that went into the additional modification and the further efforts tonight to refine this appropriately. I just thank all that were involved. Thank you Mr. Chairman.

Mr. Howard: Mr. Apicella.

Mr. Apicella: I'll echo Mr. Rhodes comments. I think we have a good product. I think it will stimulate additional land preservation, so I think it's appropriate to bring this forward as a recommendation for the public to consider at a public hearing.

Mr. Howard: Any other discussion? Mr. Hirons.

Mr. Hirons: Mr. Chair I'll support this motion of going to public hearing although I don't think it's a big secret I have various concerns with a TDR Ordinance in general and I'm not sure we have reached a point where all my concerns are satisfied or eased. But I do want to move it on to public hearing so we do hear from some more folks and I really like to... I hope during our public hearing we do hear from someone because I believe we have yet to have anyone stand at that podium and either be in support or against the TDR Ordinance here in the county. So I'll support the motion for public hearing.

Mr. Howard: Any other discussion Ms. Kirkman.

Ms. Kirkman: Yes Mr. Chair I'm going to oppose the motion. I think this Ordinance does absolutely nothing to preserve open space. It's simply yet another step in making sure that the developers will never pay another cash proffer in this county.

Mr. Howard: Thank you. Any other comments? Alright, hearing none I will call for the vote and the motion on the table is to send a public hearing the proposed Ordinance as re-written and stated by Mr. Rhodes. All those in favor of sending this to public hearing signify by saying Aye...

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Mr. Hirons: Aye.

Mr. Rhodes: Aye.

Mr. Apicella: Aye.

Mrs. Hazard: Aye

Mr. Howard: Aye. Opposed, Nay.

Ms. Kirkman: Nay.

Mr. Fields: Nay.

Mr. Howard: Motion carries 5-2.

Mr. Rhodes: Mr. Chairman I think we still also... I just want to confirm we have to still address the version that was sent to us by the Board of Supervisors correct, to send that to public hearing as well.

Mr. Howard: Yes, we do.

Mr. Harvey: Yes, and also we have companion Comprehensive Plan Amendments for both the Planning Commission version and the Board version.

Mr. Rhodes: Okay, well we'll guess handle those one at a time. But would those modified ones on the comprehensive plan amendments need to go similarly for public hearing or.....

Mr. Harvey: Yes sir.

Mr. Howard: Yes they would have to be advertised at the same time.

Mr. Rhodes: Okay, can we handle the... one each...

Mr. Howard: We should vote on one that probably corresponds with the one that you just voted on.

Mr. Rhodes: Okay, Mr. Chairman I make a motion that we send forward to public hearing the modification of the Comprehensive Plan associated with the Ordinance that we just voted on for public hearing.

Mr. Apicella: Second.

Mr. Howard: Is there a number on that?

Mr. Rhodes: I don't see one.

Mr. Harvey: There is no specific reference number, Mr. Chairman, the version that was modified based on the Planning Commissions commentary has text that's highlighted in yellow. The Board version starts off with text in green. Both versions would have the same map.

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Mr. Howard: Okay, so we're talking specifically about the one with the text in yellow and second it by Mr. Apicella. Any discussion?

Mr. Rhodes: None Mr. Chairman.

Mr. Howard: All those in favor of the motion on the table signify by saying Aye.

Mr. Rhodes: Aye.

Mr. Hirons: Aye.

Mrs. Hazard: Aye.

Mr. Apicella: Aye.

Mr. Howard: Aye. Opposed Nay.

Ms Kirkman: Nay.

Mr. Fields: Nay.

Mr. Howard: Motion carries 5-2. Mr. Rhodes you were about to make a second motion.

Mr. Rhodes: Yes, Mr. Chairman. I make a motion that we send forward for public hearing the version of Ordinance O11-25 that was submitted to us from the Board of Supervisors. And I'll do the land use or the comp plan separately. Ok that's it Mr. Chairman.

Mr. Howard: Is there a second?

Mr. Apicella: Second.

Mr. Howard: Second by Mr. Apicella, any discussion?

Mr. Rhodes: None here Mr. Chairman.

Mr. Howard: Okay just to recall everyone's recollection, this was sent to us and we were not allowed to make changes however, we were allowed to make additional recommendations but we were to vote on the Ordinance as written by the Board. And that's what we're doing here at this moment. All those in favor...

Mr. Hirons: Mr. Chairman.

Mr. Howard: Mr. Hirons... go ahead, I didn't call for the vote yet go ahead.

Mr. Hirons: Good thank you. My question is, I have a problem assigning this to public hearing because of the... it's lacking in definition of a minimum lot size when it speaks to under the park land which I think, I believe is in violation of the State Code. I think it's kind of dumb for us to advertise something that we know is not legal. And we can't make adjustments to it to make it so. But at the

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same time I recognize the fact that the Board of Supervisors sent this to us with a requirement to hold a public hearing on it. So I'm a little perplexed here. I'm not going to support the motion based on my reasoning and hope that doesn't mean the Board fines me in some way.

Mr. Howard: Any other discussion? Alright I agree there is some muddy water in their version but nonetheless we were directed and under the Board of Supervisors does have the authority to direct us to do this within a certain amount of time. And we are trying to comply with that so and at the public hearing we can always point out the flaws and the issues and remember we have a second option or second bite of this apple to vote and also send it along with a recommendation or a denial so recommend denial um after the public hearing. Alright, any other discussion, Ms. Hazard.

Ms. Hazard: No, I guess that was going to be my question is then going forward how the public hearing we will be public, both versions are being sent to public hearing. Will the highlighted version of our changes be or will someone just have to read you know, however many pages because to me the point of us having a version that we are putting out there is to highlight our recommended changes.

Mr. Howard: You know that's a great point, we did discuss this, Mr. Harvey and I as an administrative piece. If these two were to move forward and the discussion was the Planning Commission version would move forward highlighted you know, with the changes so the public could see the differences. And see it right away so there was no you know do I have to read both, here's the differences and is that correct Mr. Harvey?

Mr. Harvey: Yes, Mr. Chairman. We would, in your packet, provide you with both copies, the Boards copy as well as the Planning Commission...

Mr. Howard: But for advertising, when we advertise...

Mr. Harvey: For advertising we would... in our add description discuss the Boards version and also talk about the options the Planning Commission is recommending for modification.

Mr. Howard: The options that are different from the Boards version?

Mr. Harvey: Correct.

Mr. Howard: Okay.

Mr. Taves: Mr. Chairman, what we anticipate is if there is a provision that the Board proposed and the Planning Commission proposes a different provision. We'll have the Boards provision in there and right below that we'll say Planning Commission proposed to replace paragraph with. And we'll do that each time so that you don't have to end up advertising two entire Ordinances.

Mr. Howard: But also anyone from the public could see the difference and understand okay, these are...

Mr. Taves: Yes.

Mr. Howard: ... in some cases there glaring differences in other cases they're minor.

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Mr. Taves: Yes.

Mr. Howard: Okay, alright, we are still in discussion any other discussion?

Mrs. Hazard: So essentially the vote to send to public hearing the version we were required to send to public hearing but the advertisement will not be exactly a rewrite it will be within the body of the required advertised version with kind of highlights to the side. I'm just trying to paraphrase, make sure I got it, that note Planning Commission has recommended or whatever it might say so that it's very clear what the changes are.

Mr. Taves: We will do our best to call that out, yes.

Mr. Howard: Mr. Hirons.

Mr. Hirons: Mr. Chair I just wanted to say that actually clarifies my concern a little bit so I'll support the motion.

Mr. Howard: Alright, any other discussion? Hearing none, I'll call for the vote. All those in favor of the motion on the table which is to send public hearing the Board of Supervisors version of the TDR Ordinance, signify by saying Aye...

Mr. Rhodes: Aye.

Mr. Hirons: Aye.

Mrs. Hazard: Aye.

Mr. Apicella: Aye.

Mr. Howard: Aye. Opposed Nay.

Ms. Kirkman: Nay.

Mr. Fields: Nay.

Mr. Howard: Motion carries 5 to 2. Thank you.

Mr. Rhodes: Mr. Chairman there is a... how do we reference the land use, excuse me the comp plan modifications for this version? Do we need to do that separately?

Mr. Howard: Yes, yes.

Mr. Rhodes: Okay. I guess there is no reference number so it's just again the...

Mr. Harvey: As recommended by the Board

Mr. Rhodes: Okay, I make a motion to send forward to public hearing the Comp Plan Amendment changes, or the Comp Plan changes associated with the Boards version of the TDR Ordinance O11-25.

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Mr. Howard: I'll second. Any discussion?

Mr. Rhodes: Nope.

Mr. Howard: Hearing none, I will now call for the vote. All those in favor of the motion on the table signify by saying Aye.

Mr. Rhodes: Aye.

Mr. Hirons: Aye

Mr. Apicella: Aye.

Mrs. Hazard: Aye.

Mr. Howard: Aye. Opposed nay.

Ms. Kirkman: Nay.

Mr. Fields: Nay.

Mr. Howard: Motion carries 5 to 2. Thank you very much that brings us up to item number 2 on the agenda. Thank you Mr. Taves. Which is the Zoning Ordinance Amendment, Farmers Market. And I know we have a date for a joint meeting.

2. Zoning Ordinance Amendment; Farmers Market (Time Limit: January 19, 2012) (In joint Committee with Agricultural/PDR Committee and Planning Commission)

Mr. Fields: We have a Committee meeting next Wednesday.

Mrs. Hazard: At 10 a. m.

Mr. Howard: Next Wednesday? So we can just keep going?

Mr. Harvey: that is Correct Mr. Chairman. Just to complete the announcement the joint Committee of the Planning Commission and Agricultural Commission regarding Farmers Market will meet at 10:00 a.m. on Wednesday, November 9th in the Planning and Zoning conference room.

Mr. Howard: Excellent, now that we are up to item 3, which is the Zoning Ordinance Amendment. This was deferred a few times. You'll notice that we have to authorize item number 3 for a public hearing by December 5th.

3. Zoning Ordinance Amendment; Recycling Definition **(Time Limit: January 19, 2012)**
(History - Deferred at September 7, 2011 meeting to October 5, 2011) **(Deferred at October 5, 2011 to November 2, 2011)**
(Authorize for Public Hearing by: December 5, 2011)
(Potential Public Hearing Date: January 18, 2012)

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Mr. Harvey: Mr. Chairman, we also have in the audience here tonight Mr. Michael whose the superintendent of the landfill. The Commission had asked for him to come and speak regarding recycling matters.

Mr. Howard: Okay, that would be great to hear from him. Just state your name again when you get to the podium and then you know we had some questions obviously on the impact to the landfill. If, in fact, this Ordinance was amended and adopted and you found other, whether they're recyclers or other trash haulers if you will operating within the County. We just want to get your perspective on that. It was really more the recycling I believe.

Mr. Michael: Mr. Chairman, I'm Andrew Michael, the superintendent of the R-Board Landfill here in Stafford.

Mr. Howard: Thank you for waiting, by the way.

Mr. Michael: You're welcome. And, I was asked to come and answer questions concerning the Solid Waste Ordinance and possible changes to that. Mr. Chairman did you ask me a particular question about recycling in the county and my thoughts..

Mr. Howard: What impact, if any, would this have financially on your operation at the County landfill?

Mr. Michael: Well the County Landfill currently operates in a competitive environment. We do have a recycling revenue, it's about ten per cent of our annual revenue comes from recycling right now. We do have competitors within the County. Depending on what type of recyclable materials there are, there's many different types of materials. One of the more obvious ones is metal recycling. We recycle metal at the R-Board landfill but we have a metal recycler right down the street, Northern Virginia Metals. There's a few others and there's one on Route 17, there's a Fredericksburg. So we do compete with them, we actually, in some instances actually sell some of our metal to them. So as far as, like, our big recycling we have at the landfill is single stream recycling, which is basically the newer version of recycling that's occurred for the last few years in Stafford County and Fredericksburg. We receive that material but also waste management receives that material in Manassas. So there are several other facilities that receive recyclables BFI in Fredericksburg also receives. So there's always been some type of competitive atmosphere as far as recycling. And I didn't see a big concern with that as far as other recyclers in the area I thought it overall would probably be a great benefit to the community. The one concern I had was every five years we review our solid waste management plan for Stafford County and the City of Fredericksburg. And we submit that to the Department of Environmental Quality telling them how solid waste is handled in this region and does the plan make sense. And every five years we review that and update that as necessary. And one of the things we thought might be helpful for the R-Board in the future when we're reporting to the State, is to somehow if new recyclers come into the area that somehow we can be involved in that process so that we could see how that fits into the overall regional recycling plan. And possibly make some recommendations on how to better serve the region.

Mr. Howard: Okay, I appreciate that. I'll turn it back to the Planning Commission, are there any additional questions? It was Mr. Michael correct?

Mr. Michael: Yes sir.

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Mr. Howard: Mr. Michael... Mr. Fields....

Mr. Fields: I just... so, in your estimation in the final analysis you don't think that what's contained in this Ordinance would pose an unmanageable threat at some point to the ability of the R-Board to continue to operate as it operates now?

Mr. Michael: Well, I did see one thing, Mr. Commissioner. In the proposed Ordinance I've been looking at that and the way it's redefined, it says presorted waste refuse, garbage or other discarded materials takes place and to me the way that's worded is, if I had a trash truck and say I pulled out plastic bottles and put them in a bag, technically that's presorted. Although, they might dump that trash into another building, technically according to the Ordinance, that's presorted. But I do see that it does conflict with 21-10, that no refuse can be dumped in this County other than the sanitary landfill. So, this kind of reads that, if it's sorted they could dump refuse in another building but Section 21-10 says they can't dump refuse anywhere else other than the sanitary landfill. I think if that was possibly re-worded to take out presorted recyclables instead of presorted refuse, cause you're getting into a whole variety of different things, that might be more helpful to people applying for recycling in this region.

Mr. Fields: So you're saying that the word, I don't have the, I don't think I have the, do you have the Ordinance?

Mr. Howard: What section was the first Section 21-10 I have, what was the first section Mr. Michael?

Mr. Michael: I'm referring to September 7, 2011 memorandum...

Mr. Howard: No I understand that but what was in the definitions?

Mr. Michael: A proposed Ordinance O11-37.

Mr. Howard: Right but you said 21-10 was the second portion.

Mr. Michael: Second and 28-25

Mr. Howard: 28-25?

Mr. Michael: Yes, Mr. Chairman.

Mr. Fields: And you're saying it should read... if it read recycling it currently reads refuse and it should read, it would be more logical to be recycling.

Mr. Michael: Presorted recycling.

Mr. Fields: Presorted recycling not presorted refuse.

Mr. Howard: Mr. Harvey, where is 28.25, that's not in the proposed...

Mr. Harvey: Mr. Chairman it's not in your packet tonight, I apologize for that.

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Mr. Howard: No, it's not even in the proposed, I have the last two packages.

Mr. Harvey: I guess we should have made another copy of that. I guess that had been previously discussed back in the first meeting in October.

Mr. Howard: But 28-25 is not part of the proposed amendment to the Zoning Ordinance that we're discussing.

Mr. Harvey: It is because it's in the definitions of the Zoning Ordinance so we're defining what a recycling facility is.

Mr. Howard: So it was never included in our package?

Mr. Harvey: Not in this package, no.

Mr. Howard: Not in the package from October 5th?

Mr. Harvey: It should be in the package from October 5th, I don't have a copy of that with me, but...

Ms. McClendon: Mr. Chairman it's on the last page of that packet from October 5th if you turn all the way to the back.

Mr. Howard: Oh okay, thank you. Ah ha. So Mr. Michaels, what you're saying is where it says recycling facilities, a structure or confined site or place where recycling activities such as the extraction and processing or reprocessing of useful materials from presorted waste, refuse, garbage or other discarded materials takes place. You're saying should... instead of saying refuse, garbage and waste, it should just say, recycling.

Mr. Michael: Recyclables or something like that Mr. Chairman.

Mr. Howard: Recyclables. I think the danger in this Mr. Chairman, is if you leave it as worded, you could potentially have a business that applies to recycle and then in essence become a transfer station. But they avoid all the regulations pertaining to transfer station because they're falling under this recycling. I think there's a problem with the State as well as the permit by rule is people taking advantage of that as well.

Mr. Howard: Yes, and Mr. Harvey this was only addressing a recycling issue if I'm right. There was a ruling by the Zoning Administrator at the time.

Mr. Harvey: Correct, we're trying to attempt to correct the definition but as we got into it we realized that we had a conflict with the Solid Waste Chapter of the County Code.

Mr. Howard: So 28-25 is definitions and specific terms. If that change were to occur in the change in 28-10 occurs as Mr. Michaels is suggesting, would that still accomplish what you were trying to accomplish.

Mr. Harvey: Yes, we would need to amend the 28-25 Section to include the language that Mr. Michael is referring to.

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Mr. Howard: Okay. Alright, are there any other questions of Mr. Michael?

Ms. Kirkman: Yes, Mr. Chair.

Mr. Howard: Ms. Kirkman.

Ms. Kirkman: The dump has had to cut back its hours when it has been open because of budget constraints. So I'm having a hard time understanding how it is that you can sustain up to a ten per cent loss of your revenue and still maintain operations exactly as they are now.

Mr. Michael: Madam Chair... Commissioner.

Ms. Kirkman: I'm not the chair.

Mr. Michael: Excuse me. Well to answer that question we've had to cut back. The majority, probably sixty percent of our operating revenue goes directly back into operations. Maintaining that landfill in accordance with State regulations, Federal regulations, local regulations, a lot of different environmental things have to happen, a lot of monitoring and things of that nature. And the State requires us to have a certain amount of operators on site, certain amount of equipment maintained and ready to use. The other forty percent goes to additional services that the R-Board provides, such as, the residential drop off centers, community pride boxes, household hazardous waste stations, things of that nature. And when we do... our budgets been a little tighter than usual. Like most folks, we had to look in areas that we subsidize to pull back a little bit. Yes we did reduce, I believe, a total of three hours on the weekend. That savings was substantial to maintain all the other subsidized services that the R-Board provides to the community. And can we stand a ten per cent reduction, no. We do compete with other recyclers in the area but we are competitive and I believe we do compete very well with them. And we have done pretty well over the several years with this down economy. We continue to compete with other landfills as well for trash as well. So that, in accordance with our solid waste management plan we do keep things rolling. We did have to cut back a few hours though, just to sustain the operation.

Ms. Kirkman: So if you lost up to that ten per cent of revenues from the recycling component, you'd either have to cut somewhere or um get increased subsidies from your participating localities.

Mr. Michael: Well we receive no subsidies ma'am, from any participating localities at this time.

Ms. Kirkman: So there's no general tax fund dollars that go into the landfill?

Mr. Michael: No ma'am.

Ms. Kirkman: Okay.

Mr. Michael: And we are continuing to look for new revenue sources right now, we do have a permit for composting which we hope to finalize and that might be an additional revenue source next year to make up losses in other areas. We do fluctuate in MSW coming in, recyclables, we happen to have a very good contract right now that we are doing very well with recyclables. We're actually up probably about a hundred per cent from two years ago as far as our recycling revenue. So we're very active in the market, it's almost like participating in the stock market. We look at various recyclable markets,

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look for the best deal and jump on them and we lock in various contracts through the procurement procedure with the County. So it's an ongoing, nonstop basis. I don't think there is... it's a potential to lose ten per cent in revenue, but I don't believe so. We actually partner with many of the recyclers in the area as well.

Ms. Kirkman: And you've mentioned that before and that you like to keep aware of what's going on. My understanding is there is a large company that's come in and bought some of the smaller companies recently in the area. Are you familiar with that?

Mr. Michael: Yes ma'am, County Waste.

Ms. Kirkman: Yea.

Mr. Michael: Yea and I'll tell you I've been doing this job ma'am for nine years and I've seen many come in and buy out the many others. I could probably name a couple dozen of trash haulers that been in this area that are no longer exist. They've been taken by Waste Management or other large haulers in the area. And this is just a more recent development with Shifflett's Trash Service. And they also I believe they acquired J&E Recycling in Spotsylvania.

Ms. Kirkman: Thank you.

Mr. Howard: Okay. Thank you Mr. Michael, we appreciate your time and again thank you for your patience in waiting.

Mr. Michael: Thank you Mr. Chairman.

Mr. Howard: Probably thought you would be early when you were item number 3.

Mr. Michael: Thank you.

Mr. Howard: Little did you know, I'll bring this back to the Planning Commission. We moved our meeting in December to December 5th which is a Monday. I guess my point is, there's no need to any action tonight if we chose not to. Although, we can choose to send it to public hearing as well or do what's the will of the Planning Commission. We do have a little bit of time. We can actually wait to the next meeting if people want to absorb what we just heard.

Mr. Fields: Mr. Chairman, I'd sort of like to make a motion that we amend that Section 28-25 as recommended by Mr. Michael and then have that available for review next Planning Commission meeting. At which point we could probably make...

Mr. Howard: Alright, so the motion is to amend 28-25 would you include, he's mentioned 28-10 also.

Mr. Fields: Right, and I apologize I don't have that in front of me.

Mr. Harvey: Mr. Chairman, I believe he is referring to Chapter 10 of the....

Mr. Howard: Okay, so it's 28-25.

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Mr. Harvey: Chapter 10 is the County Code.

Mr. Howard: Nope, can't do that.

Mr. Harvey: That's correct.

Mr. Howard: Alright so the motion on the table is to amend, not today, 28-25 which is definitions and terms.

Mr. Fields: Right.

Mr. Howard: And take out waste, refuse and garbage and replace it with recyclables.

Mr. Fields: Recyclables. That's correct.

Mr. Howard: Is there a second.

Mr. Apicella: I'll second.

Mr. Howard: Second by Mr. Apicella. Any discussion?

Mr. Fields: I would like to thank again... take the opportunity. I don't blame him for not sticking around, thank Mr. Michael once again, like I said it was my pleasure to serve on the R-Board for many years when I was on the Board of Supervisors and Mr. Michael and the crew out there are doing and outstanding and remarkable job. A very, very complex task and I appreciate his forthcoming and coming up with suggestions, that's the kind of why the R-Board has done well. And, yes, that's one of the things, there is no, when I first got on the Board of Supervisors in 2000 the county was trying to figure out how to come up with a large subsidy so that residents didn't have to pay to use the landfill and actually through the his and the R-Board... well I won't give the R-Board too much credit, I mean we do the best we can but Mr. Michael really and the staff of the R-Board did such a good job of operating in a competitive environment of course that the entire operation which is in the millions and millions of dollars in these complex things is just supported purely by the cost... by their ability to make money at the landfill. So I truly appreciate that so I want to make these Ordinances as good as possible. Many, many communities even Prince William charges citizens to use the landfill. That's a big difference, a big thing that we've got that we shouldn't take for granted. Thank you. Thank you for letting me go on a little bit.

Mr. Howard: Any other discussion? Okay hearing none all those in favor of the motion on the table which is to amend Section 28-25 of the proposed amendment to the Zoning Ordinance recycling facility definition as amended by Mr. Field's motion signify by saying Aye.

Mr. Fields: Aye.

Mr. Hirons: Aye.

Mr. Rhodes: Aye.

Mrs. Hazard: Aye.

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Mr. Apicella: Aye.

Ms. Kirkman: Aye.

Mr. Howard: Aye. Opposed Nay. Motion carries 7-0. Mr. Harvey can we have this at our next meeting.

Mr. Harvey: Yes sir.

Mr. Howard: Thank you.

Mr. Fields: Thank you.

Mr. Howard: Okay, that brings us up to item number 4 which is probably going to be combined with item number 5.

4. COM1100171; Comprehensive Plan Compliance Review - Telecom Tower, Telemedia Broadcasting Tower - A request for review to determine compliance with the Comprehensive Plan in accordance with Virginia Code Section 15.2-2232, for a telecommunications facility, specifically for a radio broadcasting and wireless communications tower, located on the north side of Hollywood Farm Road, approximately 350 feet east of Fisher Lane on Assessor's Parcel 60-7A within the George Washington Election District. **(Time Limit: November 20, 2011) (History - Deferred at September 21, 2011 meeting to October 5, 2011) (Deferred at October 5, 2011 to November 2, 2011)**
5. CUP1100167; Conditional Use Permit - Telecom Tower, Telemedia Broadcasting Tower - A request for a Conditional Use Permit to allow a telecommunications facility, specifically for radio broadcasting, in an A-1, Agricultural Zoning District on Assessor's Parcel 60-7A, consisting of 8.09 acres. The property is located on the north side of Hollywood Farm Road approximately 350 feet east of Fisher Lane within the George Washington Election District. The Applicant requests a permit to build a 480 foot-tall tower to accommodate a minimum of three (3) wireless communication service providers, broadcasting for a radio station, and future public safety communication equipment. **(Time Limit: December 20, 2011) (History - Deferred at September 21, 2011 meeting to October 5, 2011) (Deferred at October 5, 2011 to November 2, 2011)**

Mr. Zuraf: Good evening Mr. Chairman and members of the Planning Commission, Mike Zuraf, Principal Planner with the Planning and Zoning Department. This request of items number 4 and 5 is for a Comprehensive Plan and Compliance Review and Conditional Use Permit for the proposed telemedia broadcasting tower. This request was last discussed at your meeting on October 5th. At the time the cases deferred, the request was to send the notice out to additional properties and in addition to just the adjacent properties and so we sent notices out to all property owners within a one mile radius of the tower. This... we did receive several comments, though all the comments that we received were provided to you in your package. And just for your recollection the time limits on the Comprehensive Planning Compliance review is November 20th and on the Condition Use Permit is December 20th. And there is some add on information provided to you at your desk tonight on these two items and I'll hand it back to you.

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Mr. Howard: Can you review the two items that are being added. I know Mr. Fields was working with the applicant but you know the first question is these are proposed additional conditions for the CUP.

Mr. Zuraf: Yes, these are proposed conditions that would be added to the already proposed conditions under the resolution you received. The first proposed condition, I'll just go ahead and read it out if you wish. Condition 1, the applicant shall arrange to meet either collectively or individually with each of the respondents to the letter sent to residents within a one mile radius of the proposed radio tower who expressed concern or opposition to the project. That meeting shall include all relevant information regarding safety, mitigation of visual impacts and the effects of radio frequency or RF radio frequency on the community. These meetings shall be required to be held prior to the submittal of the site plan to Stafford County. And the second new condition, the tower shall be painted in the most recent, officially approved color options available at the time of construction that mitigate to the maximum extent practical, the visual impact on the tower. The desired result is the use of silver or similar colored paint to maximize the ability of the tower to blend visually with the sky.

Mr. Howard: How many people expressed concern or opposition to the tower?

Mr. Zuraf: I guess without going through and counting the letters...

Mr. Fields: Mr. Chairman I believe it was about fourteen I think. Fourteen people in opposition.

Mr. Howard: And that's within the mile radius, fourteen people?

Mr. Zuraf: No we mailed it out to a little over two hundred people.

Mr. Fields: In the mile radius out of two hundred sixty-nine people we got fourteen people in opposition. They expressed opposition or concern.

Mr. Howard: How do you know who the fourteen people are?

Mr. Zuraf: Well we have the letters... it's all the comments that were received within the package.

Mr. Howard: So the fourteen people... the radio station has to meet with the fourteen different people?

Mr. Zuraf: That's according to the proposed condition. They would need to reach out to them to attempt to meet with them, either as a group or individually.

Mr. Howard: Do you know what will happen as a result of the meeting.

Mr. Zuraf: I believe it's more of just informational, it's not anything more than that.

Mr. Fields: You can ask me Mr. Chairman, I proposed these provisions.

Mr. Howard: Okay, so what will be different for these people after they meet with the radio...?

Mr. Fields: People express concerns and opposition to the tower and I believe that it's relatively simple for the applicant to address those concerns in terms of explaining any technical details that

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people may not have at their disposal. The object is not to have people stall the process nor does it have people necessarily change their mind about their opposition but it's to have everybody have a clear and in-depth understanding of what is being proposed so they don't, people don't have the wrong idea. If they still don't want it and they understand exactly all of the details that for example we have at our disposal having looked at this thing. That's fine, that's the public process which is all I'm trying to get at.

Mr. Howard: Mr. Zuraf do you know if the applicant has agreed to the proposed additional conditions?

Mr. Zuraf: No I don't, they are here though.

Mr. Howard: Okay, can we hear from the applicant?

Mr. Cooper: Good evening, Tom Cooper, General Manager for Telemedia Broadcasting. We did have an opportunity to talk to Mr. Fields earlier about those two conditions and we do agree to those conditions. Again, we're not going to change somebody's mind on whether they have health related concerns or not. I think the biggest thing that we saw from the letters if I may add some comments. I think people confuse a broadcast tower with a cell tower. And I think that's the biggest confusion, they see this giant, massive, lattice tower that's going to be four hundred and eighty feet in the air. And that's not the case, it's a three foot wide guy tower so I think that's the biggest, I guess misconception is that it's a massive structure and it's not. I have my RF engineer, Joe Davis, President of Chesapeake RF Consultants who is up from Yorktown tonight and he can address any of the RF issues that were brought up in the letter. He's more versed on that than I, I'm just a radio guy, so if you would like him to address any questions that you may have about the RF. When we were talking today, one of the biggest things was well we could do an RF measurement after the towers up. And, the comment was made, well we can do that but it's such a small amount of RF it won't even measure on the meter. That's how small we're talking.

Mr. Howard: Right and you had indicated that initially when we had asked that question. He's more than welcome to come up, he made the trip here from Yorktown. We certainly don't want to seem unfriendly in Stafford County.

Mr. Cooper: And you know, I'd like to get my money's worth.

Mr. Howard: Absolutely, come on down.

Mr. Cooper: Thank you, thank you for your time.

Mr. Fields: You paid good money for this CUP.

Mr. Howard: We just need to tell us your name again for the record when you get to the podium.

Mr. Davis: I brought some props.

Mr. Howard: Great.

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Mr. Davis: My name is Joseph Davis, I'm a radio frequency engineer. I work with radio and TV stations across the country in licensing matters. I'm a professional licensed engineer here in Virginia. This is a publication by the FCC, Federal Communications Commission. I'm sure your staff has a copy of this and have possibly referred to it from time to time. It's titled a Local Government Officials Guide to Transmitting Antenna RF Emissions Safety. Rules, Procedures and Practical Items. And that issues is what's addressed right away in this booklet, a common question raised in discussions in the sighting of antennas is will this tower create any health concerns for citizens? And frankly, as a matter of compliance, FCC rules require that transmitting facilities comply with RF exposure guidelines. Now if you like, I'll give him his money's worth, I can give u a discussion of the FCC's standard.

Mr. Howard: No that won't be necessary but ...

Mr. Davis: Okay.

Mr. Howard: Just for my, for an RF interference perspective, I haven't seen any of the correspondence from the residents who, you know voiced their concerns. I have no idea what their concerns are?

Mr. Davis: Um Hmm.

Mr. Howard: I know a question I think I asked was from an RF perspective for the television or radio in their home for the adjoining properties you know, what if something were to occur and I believe Mr. Cooper indicated that in the past the radio station had gone into the home and determined is this their interference or not? And then were able to put some RF filters to you know to help those other electronic devices operate without the interference. Is that the case or?

Mr. Davis: As a matter of compliance with the FCC licensing procedures for the first year of operation, if there is any interference to receiving equipment within what we call the blanketing contour, and that's a very strong signal level. The licensee is required to address that.

Mr. Howard: Okay, and I think that was a concern and then you know the health hazards or other concerns I didn't hear voiced a lot but certainly I'm sure that would be a concern I'd have to believe of one of the fourteen who voiced opposition. And it sounds like you'll be able to talk to them and explain to them.

Mr. Davis: Oh sure, I can give them the lengthy explanation.

Mr. Howard: Yea, exactly there is no issue and here's why, here's the validation from the FCC.

Mr. Davis: Um hum, Um hum.

Mr. Howard: Ok, are there any questions of Mr...

Mr. Davis: Davis.

Mr. Howard: Davis, thank you.

Mr. Fields: I don't have any.

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Mr. Howard: Mr. Davis, thank you for waiting and we definitely appreciate you making the trip up to see us.

Mr. Davis: I'll stand by.

Mr. Howard: Hopefully the traffic wasn't too bad for you.

Mr. Davis: It wasn't too bad.

Mr. Howard: Coming that way....alright Mr. Zuraf is there anything else to add? Okay, Mr. Fields.

Mr. Fields: Yes, Mr. Chairman as we know we saw in the last time we saw from the initial submittal we know that they've re-sighted the... I don't think it's in our packet today. But everybody's aware right that they've re-sighted the tower so that the guy zone, what's called the collapse zone, where these towers collapse, is entirely within the bounds of the property. It doesn't extend past the property line onto the road or in the right-of-way of any way, shape or form. So let me just make sure everybody's clear with that, so that's achieved. I'm going to make a motion to recommend approval of the Conditional Use Permit, CUP1100167 with the following two additional, as you have at your place add on 4 and 5. They were read in full, I don't think I need to read them out but the condition that the applicant will meet with the individuals who expressed their concern to explain all of the facts relating to the tower. And also number 2 that the tower will be painted in a way that meets official approval and will maximize its ability to blend with the sky and be the least visually impactful. Also the use of, their use of strobe, white strobe during the day, red strobe at night, also minimizes those impacts. So I'll make that motion.

Mr. Rhodes: I would second, but Mr. Chairman I would just ask of you, or anyone of staff does it matter of the order? Do we have to do a Comprehensive Plan Compliance review first?

Mr. Fields: Oh I'm sorry about that.

Mr. Howard: Typically.

Mr. Zuraf: We should do the Comp Plan first.

Mr. Fields: Okay, let me back up.

Mr. Rhodes: I remove my second.

Mr. Fields: I make a motion for the Comprehensive Plan, recommend approval of the Comprehensive Plan Compliance Review.

Mr. Rhodes: Second.

Mr. Howard: Discussion? Okay, all those in favor of Mr. Fields motion which is to recommend approval for the Comprehensive Plan Compliance Review for the telecom tower telemedia broadcasting towers signify by saying Aye.

Mr. Fields: Aye.

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Mr. Hirons: Aye.

Mr. Rhodes: Aye.

Ms. Hazard: Aye.

Mr. Apicella: Aye.

Ms. Kirkman: Aye

Mr. Howard: Aye. Opposed Nay. Motion carries 7-0.

Mr. Fields: Back for my other motion for as stated for the CUP1100167, I'll put the motion back on the floor.

Mr. Rhodes: Second.

Mr. Fields: I think I've been clear on the proposals. I understand and appreciate everyone's concerns. I realize that not everybody in a situation like this can always be happy and I'm always apologetic and sorry. I hope that your meeting and additional follow-up if you need to with the applicant and anybody else related to this issue will help persuade some of the people's worse fears. The bottom line is that this is in an agricultural area and ultimately this is the type of area relatively open that this type of facility which serves a broad set of public interest is best suited for. Some people are always going to be unhappy when these things are next to them and I appreciate and understand that. However, I don't feel that in this case the response was quite of the magnitude to warrant recommendation of denial of the tower itself. I feel that the safety concerns, all the safety concerns and functional concerns have been addressed and therefore I feel comfortable recommending that this go to the Board of Supervisors for their decision. Reminding people if they are listening, if they're unhappy with this decision, like all these things, with the Planning Commission, you get another bite of the apple at the Board public hearing.

Mr. Howard: Alright, any other discussion? Hearing none we'll call the vote for recommending approval of conditionally use permit, CUP1100167, the telecom tower telemedia broadcasting tower. All those in favor signify by saying aye

Mr. Fields: Aye.

Mr. Hirons: Aye.

Mr. Rhodes: Aye.

Ms. Hazard: Aye.

Mr. Apicella: Aye.

Ms. Kirkman: Aye

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Mr. Howard: Aye. Opposed Nay. Motion carries 7-0. Thank you. That moves us up to item number 6, which is the Zoning Ordinance amendment for exempt subdivisions. And I believe we'll be hearing from Mrs. Hornung on this.

6. Zoning Ordinance Amendment; Exempt Subdivision (**Time Limit: December 7, 2011**) (**Scheduled for October 5, 2011**) (**History - Deferred at October 5, 2011 to October 19, 2011**) (**Deferred at October 5, 2011 to November 2, 2011**)

Mrs. Hornung: Good evening Mr. Chair and members of the Commission. At the last Planning Commission meeting the Planning Commissioners wanted some additional information on... if there were any specifics regarding any family subdivisions in which the staff had issues with. Along the way there were only about... I think I... in your packet there are some details to that as well as copies of Sections of the State Code which govern the provisions for Subdivision Ordinance which some are mandatory and some are provisional. As well as the couple Sections out of the Stafford County Code, which it's very explicit that all subdivisions of land shall come through the County specifically Department of Planning and Zoning for subdivision review and approval by the subdivision agent, which is Mr. Harvey. Since about 2009 there have only been five family subdivisions and only one of those asked for a waiver of the 5-1 lot to depth ratio. On the third page of your packet it does give some details as to what some of the common problems are of family subdivisions. And they are actually more general in nature than they are specific to a particular project. Many of the lots that... or parcels that become willed to heirs, end of being maybe landlocked and the relatives cannot acquire an easement either because within the relatives they cannot agree or it might be getting from a different owner of the adjacent parcel that they can't acquire an easement for whatever reason, whether it's through parcels that are already developed or just the nature of the shape of the lot. Also sometimes it doesn't meet the lot depth to shape ratio which are the requirements in our Section in the Stafford County Code Sections 22-141...

Ms. Kirkman: Mr. Chair.

Mrs. Hornung: ... to 153 of the Subdivision Ordinance. Also...

Mr. Howard: Ms. Hornung hold on please. Ms. Kirkman.

Ms. Kirkman: If you could just back up to the easement question. I'm not sure what... how this legislation, the proposed legislation will address the easement problem.

Mrs. Hornung: It won't because that's a private issue.

Ms. Kirkman: Okay, then why are you raising that tonight?

Ms. Hornung: Because the Planning Commission had asked what problems have staff encountered in dividing land through family subdivision which couldn't be subdivided. And for the requirements that are in the Subdivision Ordinance, whenever a parcel is divided, it has to have access to a public road. And if a parcel is divided and does not have access... well if it's proposed to be divided and there is no access to a public road, then that parcel cannot be subdivided until an access is acquired. And through the Family Subdivision Ordinance there is no requirement to have a state maintained road for those parcels. There can be an ingress/egress easement, but if that has to cross another parcel, that is a

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private issue with those property owners to acquire an easement from the land-lock parcel to the public road.

Ms. Kirkman: So I think the request was to look at problems with the Family Subdivision Ordinance in relationship to having to go through the review process.

Ms. Hornung: Well we discussed that the last time on the items that are required for a family subdivision and what items are possible that could be omitted from the requirement and then there were the questions on what problems have staff had specifically with the family subdivision process that have come up on some lots that could not be subdivided. And those are listed on page three. We have had... encountered problems where somebody did want to come in through the Family Subdivision Ordinance to subdivide their property, but because they were in the Urban Services Area they were required to connect. Well that was too costly for those family members so they did not subdivide at the time. I don't recall that property coming back in for a subdivision application. But these are some of the things that happen to come up through the family subdivision process because these are the requirements that are within the Ordinance to subdivide.

Ms. Kirkman: So all of these types of things you have listed here, like it doesn't perk, it can't meet minimum lot sizes, it's within the urban service area so there's going to be a cost to connect. Those are things that would not come to light unless there were some sort of subdivision review. Is that correct?

Mrs. Hornung: That is correct.

Ms. Kirkman: So these are problems that if we did not have the current process or something similar to it would be unknown until what point? How would these kinds of problems be discovered otherwise?

Mrs. Hornung: When somebody... the owner of the property comes to the Department of Planning and Zoning and asks, I would like to subdivide my property, how can I do that? Staff looks up the zoning designation...

Ms. Kirkman: No, but I mean under the proposed legislation which has the exempt subdivisions. How would these properties problems come to light?

Mrs. Hornung: Well right now we don't have an Ordinance for an exempt subdivision.

Ms. Kirkman: I understand that but if the exempt subdivision... if that exemption were passed...

Mr. Howard: If this was in place, how would the issues that you've raised come to light and at what point would they come to light is what Ms. Kirkman is asking.

Mrs. Hornung: During the subdivision process. The only way this would not come to light if somebody could go with a plat straight to the Courthouse and record it without staff review.

Mr. Harvey: And as Mrs. Hornung indicated the State Code prohibits that. So it has to go through some sort of County review. The question is what level of review and what standards do we want to

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put in that Ordinance provision if the Commission recommends to the Board that any changes be made to the current situation.

Ms. Kirkman: So... but once you put in the provisions to address these sorts of things like access, perk, lot size, those sorts of things, aren't you back to what we have now, or pretty close to it?

Mrs. Hornung: Yes.

Mr. Harvey: Yes.

Mrs. Hornung: That is correct.

Ms. Kirkman: So.

Mrs. Hornung: These issues come up and then staff is able to work with the applicant to address them and come into compliance. And if they can't, then those parcels of division don't come before the County to review.

Ms. Kirkman: Thank you. That's, helpful. So it's... it is actually helpful to see what the problems are. Thank you.

Mrs. Hornung: Yes.

Mr. Howard: Mrs. Hazard.

Mrs. Hazard: Thank you for laying all this out. It seems like this comes up in a rare set of circumstances but when it does come up it does have a large impact on the property owner or their heirs or whomever. Yes it would be their heirs. I think we've been thinking of some under a will. It seems that the potential way to do this, like we said, we need to have... make sure that a plat is approved and looked at by the County. Is there a possibility, which is for these types of matters, the kind that fall into these very difficult... we have parts of Stafford that it's hard to subdivide. That there is some kind of process that they may petition the Board of Supervisors or the Planning Commission for a waiver or some kind of way... these seem very rare that I don't want to throw out a huge... something called an exempt subdivision, that gives me great heartburn. Having looked at lots of things that people thought were exempt and aren't. But that there is a mechanism potentially for those that are being aggrieved from this that there is at least a process for them to either... and I'm not sure exactly the answer, but that there is either a waiver or a petition because I know in several other counties on the family subdivision if there's a hardship on the five year or fifteen year, or whatever theirs is, they may go to the Board of Supervisors and present their case and it may be approved. And I'm wondering if some kind of mechanism like that potentially solves this more than us creating some new category.

Mrs. Hornung: Well Stafford does have that exactly what you described. That if there appears to be a hardship when the economy turned that the family subdivision recipients could come before the Board of Supervisors and ask for a waiver of that subdivision requirement of the five year holding. And I believe there may have been only one or two in the last five years that I recall since I've been here, that have been able to acquire that. The other thing, I thought about it when we were talking. The waivers of the Sections 22-141, the lot descriptions, shape and width, there is that waiver that the applicant can

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come before the Planning Commission to ask for a waiver of that particular section. The other items right now, any division of land has to show water or sewage availability. There are localities that... Hanover for one that they only require the Health Department to submit a letter of certification and that is that it appears that a drainfield could serve the sight. But there is no guarantee and so there is the potential for creating an unbuildable lot. But also in discussions with the Health Department, they said now with technology and alternative systems, typically they are few and far between to have an unbuildable lot. I think about the eastern shore where the land is prominently under water and they have drainfields. But they are in an enclosed system. So there are systems that are out there, they are very expensive so it's also up to the landowner if that's the venue that they want to go to subdivide.

Mr. Howard: Ms. Kirkman.

Ms. Kirkman: Don't we also have a general provision in our Subdivision Ordinance that they can apply for any waiver, a waiver of any provision of the Subdivision Ordinance?

Mr. Harvey: That is correct. And that's what Mrs. Hornung was referring to is that the Subdivision Ordinance allows a waiver of any provision upon finding of the Planning Commission that the waiver is appropriate. One issue that may be seen by sub-dividers is that the waiver process... there is a fee associated with it. And I know that there was previous discussion on the Commission about fees and maybe that was the concern since they have to go through a County approval process at some point and time. Maybe there is a way to have a reduced fee. The fees in the County are adopted by Ordinance, but the State Code says that the Board can charge whatever fee it wants provided that the fee does not exceed the services provided. So the Board could artificially have a reduced fee for these types of applications.

Mr. Howard: Mr. Apicella.

Mr. Apicella: To what extent could the variance or special exception process be applied to some or all of these circumstances?

Mrs. Hornung: Well the variance is usually only for setbacks or any other kind of hardships. I'm not sure that the subdivision of land would be able to follow that venue.

Ms. Kirkman: Right, the variance is a former member of the Board of Zoning Appeals. And I would assume as an alternate to the BZA you would know this.

Mr. Apicella: I'm just asking the question to put it out there.

Ms. Kirkman: The BZA can only intervene in zoning matters and this is a subdivision matter.

Mr. Apicella: And what about special exception?

Mrs. Hornung: That would be also the way of the BZA for only zoning matters. I know the special exception right now we have for flood plain... the specifics I'm not real articulate in.

Mr. Harvey: They're several special exceptions in the Zoning Ordinance based on zoning category. In years past, the Zoning Ordinance allowed a special exception to reduce the lot size in A-1 to 1 acre for

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a family subdivision. That was repealed around 1995 because of the concern you're creating lots that are smaller than the minimum size. That was one relief that was given to family subdivisions prior.

Mr. Howard: Okay. This was sent to us from the Board of Supervisors and we believe it was sent to solve an issue that had recently come through the process. What... Ms. McClendon, what is the requirement... there's no requirement for us to send this to a public hearing is there?

Ms. Kirkman: There isn't anything to send.

Mr. Howard: Well, we're supposed to draft something.

Ms. Kirkman: Well I'm sorry Mr. Chair, just to clarify. We don't have an Ordinance that the Board sent to us that we have a time limit.

Mr. Howard: Correct. I want to make sure that we're not required to take any action if that is the will of the Commission.

Mr. Harvey: While Ms. McClendon is verifying things Mr. Chairman, it's my recollection that the Board ask the Commission to come up with a recommendation for the Board to consider whether to ask you to conduct a public hearing.

Mr. Howard: Okay. So we could, as a body recommend that they do nothing with this.

Ms. Kirkman: Or that they look at the fee structure.

Mr. Howard: Right, re-evaluate the fee structure.

Mr. Apicella: Mr. Chairman, I did notice in looking at the State Code that it does allow for aunts, uncles, nieces, and nephews to fall within the definition of an immediate family. And what I'm not clear is why they were excluded in Stafford's Family Subdivision Ordinance.

Mrs. Hornung: The only information that I'm aware of is that they weren't... that provision wasn't the interest of the Board at the time.

Mr. Apicella: So...

Mrs. Hornung: It was relayed to them... when the definition was brought into compliance with adding spouse of the child and adopted. Because a couple years ago, staff learned that our definition was not in total compliance. And when asked if they wanted to further the definition that was not the will of the Board.

Mr. Apicella: Okay. Well in my view at a minimum, I'd like to see those categories be added to the immediate family definition.

Mr. Howard: Well we have until December 28th to make some type of recommendation to the Board.

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Ms. Kirkman: We've discussed this pretty extensively, I don't know if my colleagues are ready to make a recommendation now... I just don't know if there's any additional information that would change.

Mrs. Hazard: At this time I would not really ask staff to come up with anything. I guess the only comments I have still go to the waiver provisions. I don't know off the top of my head the fee structure for the waivers. That might just be interesting information, just to understand. But I will certainly coordinate with the Board member that may have sent this forward and see if some of this is useful. And if there are other ideas that we have, but having debated it very well, I'm not willing tonight to make the recommendation. But I would like to at the next meeting. I just would like to have some further consultation. I would move to defer to our next meeting on the 16th.

Mr. Howard: So the motion is to defer amendment to the Subdivision Ordinance to November 16th. Is there a second?

Mr. Rhodes: Second.

Mr. Howard: Any discussion? Ms. Hazard would you include in there, if there is an appetite, if this individual would know, to redefine the definition of family.

Ms. Hazard: Yes I will.

Mr. Howard: Okay, any other discussion? Alright I'll call for the vote on the motion. All those in favor of the motion on the table signify by saying aye.

Mr. Fields: Aye.

Mr. Hirons: Aye.

Mr. Rhodes: Aye.

Ms. Hazard: Aye.

Mr. Apicella: Aye.

Ms. Kirkman: Aye

Mr. Howard: Aye. Opposed Nay. Motion carries 7-0. That brings us up to item number 7, which is the Westlake, Preliminary Subdivision Plan.

7. SUB2800773; Westlake, Preliminary Subdivision Plan - A preliminary subdivision plan for 701 single family detached units, zoned R-1 and R-2, consisting of 446.46 acres located on the south side of Warrenton Road between Richards Ferry Road and Cedar Grove Road along Horsepen Run on Assessor's Parcels 35-20, 20A and 21 within the Hartwood Election District. **(Time Limit: December 28, 2011) (History - Deferred at October 5, 2011 to October 19, 2011) (Deferred at October 5, 2011 to November 2, 2011)**

Mr. Howard: Good evening Mrs. Doolittle.

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Mrs. Doolittle: Good evening Mr. Chairman and members of the Commission. The Westlake Preliminary Plan was deferred at the last meeting to allow time for Mrs. Hazard to discuss the use of the schools site with the Board of Supervisors and School Board Representatives.

Mr. Howard: Thank you.

Mrs. Doolittle: You're welcome.

Mr. Howard: And should we go to Mrs. Hazard for that.

Mrs. Doolittle: Sure.

Mr. Howard: Okay, Mrs. Hazard.

Mrs. Hazard: Sure, I feel that I've been able to do the due diligence I wanted to, to coordinate with the Board member since this does not go before the Board of Supervisors. Officially this is only a Planning Commission action that I feel that the... any concerns that they have had been addressed by myself or by the applicant. And, that at this time I'm actually ready to move for SUB2800773 Westlake Preliminary Subdivision Plan for approval.

Mr. Rhodes: Second.

Mr. Howard: Discussion? Hearing none, no discussion. Okay I will now call for the vote. All those in favor of moving forward with the motion on the table for SUB2800773 signify by saying aye.

Mr. Fields: Aye.

Mr. Hirons: Aye.

Mr. Rhodes: Aye.

Ms. Hazard: Aye.

Mr. Apicella: Aye

Mr. Howard: Aye. Opposed Nay.

Ms. Kirkman: Nay.

Mr. Howard: The motion carries 6 to1. Thank you. Thank you for waiting by the way. That brings us up to item number 8. The Zoning Ordinance Amendment, no we're not doing that one, sorry. That brings us to new business, number 9.

8. Zoning Ordinance Amendment; Rappahannock River Overlay District and Potomac River Overlay District (Referred back by Board of Supervisors) **(Time Limit: October 6, 2010)** **(History - Deferred at June 16, 2010 Meeting to August 18, 2010)** **(Deferred at July 21, 2010 Meeting to September 1, 2010)** **(Deferred at September 1, 2010 Meeting to October 6, 2010 Meeting)** **(Deferred - Requesting additional time from Board of Supervisors)**

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NEW BUSINESS

9. Comprehensive Plan Amendment and Zoning Ordinance Amendment; Courthouse Urban Development Area Plan and UD, Urban Development Zoning District. **(Time Limit: December 31, 2011)**
(Authorize for Public Hearing by: November 2, 2011)
(Potential Public Hearing Date: December 5, 2011)

Mr. Howard: And number 9 we were going to try something totally unique I understand. We're going to try and tap into a consultant via Skype. Is that still going to happen?

Mr. Harvey: Yes, Mr. Chairman.

Mr. Howard: This is ground breaking in Stafford County.

Mr. Zuraf: Well kind of, it's audio, the audio version of it so we'll see what happens.

Mr. Howard: But he can see us?

Mr. Zuraf: Yes.

Mr. Howard: And this is the Comprehensive Plan Amendment and Zoning Ordinance Amendment. Courthouse Urban Development Area Plan and Urban Development Zoning District. And I believe we have other consultants with us in the room, I saw them in the hallway.

Mr. Zuraf: Yes.

Mr. Howard: And boy... did they not think they would be here this late.

Mr. Zuraf: You have received the draft of the Courthouse Urban Development Area Plan and the draft Zoning Ordinance that creates a... what is called a UD, Urban Development Zoning District that would implement the goals of the plan. The Ordinance itself is within Appendix D of the plan and would be placed into Ordinance form should it be authorized. The materials you received is a product of the Urban Development Area grant that the County has received through VDOT and it's been working on over the past year and a half. The consultant team is here to present the plan and Ordinance. We have Deana Rhodeside and Meredith Judy from Rhodeside and Harwell, Jeff Parker the transportation sub-consultant from RK&K and who we hoped to get through Skype, is Collin Scarf from Coach Studio, the sub-consultant who developed the Ordinance for us. And you have received some site revisions this evening at your desk. Revisions to the draft Ordinance and some slight modifications of one of the purposes for one of the sub-districts. Also, we made some adjustments in the Ordinance where there is a potential for differences in definitions and terminology so we've made a modification so all the terminology of uses is consistent with what we already have in the Zoning Ordinance where there is inconsistency we've added new definitions and deleted duplicate definitions that might be different. We did remove several of the provisions that deal with how to measure a site lot, how to measure building set-backs, things that we already have in our Zoning Ordinance that could cause confusion to somebody reading the Ordinance. They are good ideas and might be able to use at a future time but given that they are in conflict we feel it's better at this time to remove those. Some of the provisions do remain though, that have not been dealt with as far as building design and

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measurements. And, so, you have those adjustments in front of you. At this point I'd like to ask Deana Rhodeside to come up and go through the presentation for you.

Mr. Howard: Thank you.

Mr. Zuraf: Can I have the computer please?

Ms. Roadside: Good evening.

Mr. Howard: Good evening.

Ms. Rhodeside: My name is Deana Rhodeside. I'm with the firm of Rhodeside and Harwell. We are planners, landscape architects and urban designers in Alexandria, Virginia. And I'm here tonight to talk about the process... planning process that we have just completed for the proposed Courthouse UDA small area plan. I wanted to talk a little bit about the public input, describe the land use concept plan, have Jeff Parker talk about the transportation analysis that was done for the concept, talk very briefly about design guidelines, lessons learned that could be applied to the other UDA's in Stafford County. Briefly describe recommendations for both the Comprehensive Plan Amendments and Zoning Code Amendments. And then, have Mike talk about next step. During this past summer we... June, July and August, we looked at several alternative land use concepts and went before the public at a workshop in July with those alternatives. I've talked with people about a vision for the Courthouse UDA area and the concept that would best meet that vision. We spent time then revising that plan and in August came before the Board of Supervisors with that draft land use concept. In September, we held a public open house. We showed the revised land use concept to people and presented it in detail. We talked about the traffic analysis results. And, also at that meeting, because we thought that the planning work that's being done right now for the Route 1 and Courthouse Road street scape studies was very integral to the planning for the Courthouse UDA. We had the consultants forward that, who are doing that study, at the open house as well to describe that study for the first time to the public. And then in October, we came before the Board of Supervisors again for a referral to the Planning Commission and that's why we're here tonight. Public input, and I'm going to figure out why...oh there it goes. So when we met with people in July we asked them what kinds of visions they had for the area... of the Courthouse UDA area and very much in line with earlier comments that we had heard people make for the last six or seven months. They talked about a downtown for Stafford County. And they talked about a mixture of environments in the downtown to allow for a place that would have quiet tree line neighborhoods but also a town center that could offer a variety of shopping, living, working, entertainment kinds of options. The kinds of examples that people gave were Fredericksburg, Old Towne Alexandria, Reston and Arlington. So, sort of very mixed use, very active places, and also asked for opportunities for family oriented spaces and uses. Sorry this is a really sensitive.... Then in September for the open house, we mostly got some feedback about more specifics that really go beyond the land use plan concept, such as a parking garage near the Courthouse in specific open space programming opportunities. We had a request for the preparation of a tax map parcel overlay for the concept plan and the Planning Department is currently preparing that. And, one of the comments also wanted to make sure that the green spaces that were included in the land use concept were actually going to be eventually implemented. The other concepts were concepts that related to the Route 1/Courthouse Road street scape plan and they are here for documentation but I'd really prefer not to go into them tonight. So let me give you first an overall view of the structure of the land use concept and then I'll go into various areas in detail. So the context for this is that we have created a place that based on the required Urban Development Area legislation that one, establish a

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traditional neighborhood development for these UDA's, one that's very walkable, one that establishes a sense of place in each of these areas. We have insured the connectivity of this place and the walkability by establishing a network of roads that in a street grid pattern that would allow people to walk and to get around this area easily. And I'll talk more about that in a minute. In addition to that, we established a land use hierarchy that has the dense mixed uses development at the core of the area. And then fanning out to medium density, so that in the core it would be vertical mixed use. Next to that would be medium density, more horizontal mixed use development. And then on the edges would be lower density primarily residential development to meet with and be compatible with the residential areas that are around the UDA. We looked at the square footages, the numbers of units, residential units that would result from this land use concept as well as the square footage for commercial and compared that to the numbers for the Courthouse UDA in the Comprehensive Plan. And as you can see for residential, we can easily fit the required residential within the land use concept. For the commercial square footage the economic market analysis...

Mr. Howard: Ms. Rhodaside.

Ms. Rhodaside: Yes.

Mr. Howard: Ms. Kirkman.

Ms. Kirkman: I just want to understand this chart that you have... we have in front of us. This table where it says Comprehensive Plan, those are the numbers that are in the Comprehensive Plan?

Ms. Rhodaside: Yes they are.

Ms. Kirkman: What are the numbers that are in Courthouse UDA's small area plan?

Ms. Rhodaside: They are... they... the land uses that you see would have the potential to yield at least six hundred and fifty-six multi-family units, it could yield six hundred and twenty two. But for townhouses you could yield three hundred and thirty-three and for single family six hundred and fifty-two.

Ms. Kirkman: So you are putting...

Ms. Rhodaside: In that land use concept.

Ms. Kirkman: So this small area plan actually puts forward the potential for more residential units then what's in the Comprehensive Plan.

Ms. Rhodaside: It has the potential that you could have slightly more residential units.

Ms. Kirkman: Thank you.

Ms. Rhodaside: And we have slightly less in terms of commercial square footage and the reason for that is that we had a part of our team included an economic firm. We had a market analysis done for all of the UDA's and given the economic conditions right now and looking at the competition in your surrounding counties, they're projections were much lower than the commercial square footage projections across the board for your UDA's. And so, we felt that it was advisable not to plan for two

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million seven hundred thousand square feet of commercial at this point. And all the impacts of that but to go slightly lower and plan closer to two million.

Ms. Kirkman: So does that two million that you've planned for here take into account additional commercial going into the other UDA's?

Ms. Rhodeside: Yes, it absolutely does.

Ms. Kirkman: Okay.

Ms. Rhodeside: All of the UDA's had their own commercial numbers that are part of the Comprehensive Plan.

Ms. Kirkman: So do you recall what was the total that you've put forward in your UDA analysis versus what was in the Comprehensive Plan?

Ms. Rhodeside: I don't remember the numbers but it was substantially lower than the numbers that were put forward.

Ms. Kirkman: Could you get that number to us?

Ms. Roadhouse: Yes, of course.

Ms. Kirkman: Or maybe Mr. Harvey has it. Thank you.

Ms. Rhodeside: These numbers were based on certain assumptions for residential and commercial. For mixed use areas they were based on a FAR, Floor Area Ratio of .4 which is required by the UDA legislation for commercial areas. It assumes sixty-five percent of mixed use acreage and commercial use and thirty-five percent of mixed use in multi-family use which would be above commercial. And then apartments and condominiums were assumed to have an average size of a thousand square feet. The single unit multi-family would and the other residential multi-family townhouse and single family were in the dwelling units per acre as required by the UDA legislation which was twelve dwelling units for multi-family. Six for townhouses and four for single family detached units. I wanted to once again underscore because I think it's critical to all of your UDA's. The concept of network of circulation so that you can connect the UDA's and provide options for people to walk, options for people to get around the area in other ways as well and to stay off of some of your major roads. We've also defined various street types within this UDA and they go all the way from the local streets that would allow people to get around their own residential neighborhoods to larger streets. And particularly if you see the top and the bottom green loops, those are the major areas for connecting the north part of this UDA to the south part, both for pedestrians and for other vehicles, including in the future the possibility of transit, bus transit in those areas. We've also and we will go into this a little more later as well, put... included sample cross sections of streets that would go with your previous types of diagrams for the different types of streets. And these are in accordance with our VDOT SSAR standards. So the UDA proposes basically three different districts. Going from north to south they are the Historic Courthouse Village District, the New Downtown District which is just that second merging into the Historic Courthouse Village. And then to the south, the South Courthouse Common Area, and I'd like to describe each of those. The Historic Courthouse Village obtains its character from the fact that many of the... the character of that area is one of historic buildings. There's the

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Courthouse, there's the well, there are a number of elements that people in our meetings wanted to preserve, wanted to respect in terms of future development. And so this area would be an area that would be slightly less dense, more medium density than the downtown core would be and it would in fact respect the historic qualities of this area. It would allow for new county offices adjacent to the existing administration building. It would provide for townhouse multi-family and single family housing residential, it would provide additional green space for open space and the center of this village area would be only a quarter of a mile from the center of the downtown, so they would be within walking distance of each other.

Ms. Kirkman: Could you go back to that slide, please.

Ms. Rhodside: Sure.

Ms. Kirkman: The historic Virginian Hotel, which landmark is that? I just...

Ms. Rhodside: It is one of the historic buildings.

Mr. Harvey: It's currently the Aquia Realty building.

Ms. Kirkman: Oh, thank you.

Ms. Rhodside: Thank you. Okay. What you see in your right hand corner are the existing conditions for the corner of Route 1 and Courthouse Road. And you see the little edge of the Courthouse there on your right. And what we're trying to represent here is not that this must be the way things will develop but this is to give you an idea of the scale and the density and the potential in this area. It would be much in scale with the development that's currently in the area and I think would create a very nice gateway to the downtown area. The New Downtown. The New Downtown would be the core or the heart, the densest part of this Urban Development Area. It would include a very active street. All the purple that you see in the center is mixed use. The red is ground floor retail and above that would be either residential or office uses. The area also connects down to the hospital which is in the southern corner of that circle. And it provides for both high density and medium density housing. The mixed use and the medium density housing is around a proposed new open space which we're calling the public garden. So it provides for walkable streets, active space, and green space. A view of the area toward that public garden and then a view of the downtown and at the end of that street is the hospital. So you would retain a view of the hospital and the downtown would be oriented toward that connection with the hospital. And you see there the ground floor retail and the upper floor multi-uses of possibly office and residential. Then, on the southern portion of the site, is the area we're calling the South Courthouse Commons. And that area allows for a larger floor plate commercial on both sides of Route 1 with a pedestrian crossing that would connect both sides of Route 1. As well as both multi-family, townhouse and single family development with a very small community serving mixed use core at the center of that circle. And that center of this area would be about a half to three quarters of a mile from the center of the downtown. So, still within a walking distance, although a larger walking distance. So a driving/walking distance of the downtown. With that I'd like to turn this over to Jeff Parker, from RK&K to talk about the transportation analysis that was done of this land use concept.

Mr. Parker: Thank you. Again, my name is Jeff Parker from RK&K.

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Mr. Howard: Can you just lift the microphone up a little higher, there you go perfect.

Mr. Parker: I'm just going to go over briefly the transportation analysis that we performed for the concept that Deana just described. Basically, we're following a VDOT traffic impact study process so that we can prepare a document that will eventually be submitted to VDOT. So the order of analysis follows their outline. We started with looking at existing conditions. We have performed existing traffic counts just this year to assess the existing levels of service and delays along Route 1. We decided that the focus of the transportation analysis should be along Route 1 since that's where the critical congestion issues are in the current condition. The next step would be to look at the 2020 timeframe without the Urban Development Area development that Deana just described. And then, lastly, we would look at what happens with the current... or the 2020 background roadway network with the UDA development that was just described. Then we look at some mitigation for any congestion problems that may arise due to that additional development. The table that you see here at the very top portion shows levels of service and delays for the morning and afternoon or evening peak periods for the three key intersections along the Route 1 corridor that we examined at Hope Road, at Courthouse Road and at Hospital Center Boulevard. As you can see under existing conditions we've got some orange indicating some moderately congested conditions, what we would call level of service E. And we have some red there at Courthouse Road during the evening peak hour which we would call level of service F. Which as you're familiar with, is very long cues of traffic approaching the intersection from every direction. The middle table that you see here describes our future condition with some improvements... some VDOT improvements to the local roadway network. The improvements that were assumed include, relocating Route 630 to the south of the existing Courthouse Road and tying into a proposed interchange with Interstate 95. Those are the only two improvements that are assumed as the baseline condition for the future analysis. With those roadway improvements, and with the historic traffic growth that we determined by looking at past traffic count data from VDOT, we actually have some improvement along Route 1 just those that interchange in the relocation of Route 630. Basically you are seeing a diversion of traffic that today uses Courthouse Road and comes right through the center of Stafford, being diverted a little bit to the South of the center there which frees up capacity for the Hope Road intersection and the Courthouse Road intersection, which would no longer tie in directly to the I-95 interchange. So, there you see you have one level of service F location in the a.m. peak... during the a.m. peak hour, but some of the other locations improve. The table at the bottom shows what happens if you just have those two VDOT improvements that I mentioned. The interchange and the relocation of 630 but you add in the trips... the vehicle trips that we anticipate would be generated by the residential and commercial development that Deana just described previously for the UDA. Those trips were the trips that were added to determine that level of service in that table, were based on standard institute of transportation engineering formulas and trip reduction rates based on the mixed use type of development that's being proposed. And the result of that are the levels of service F that you see at the three intersections, Hope Road, Courthouse Road and the relocated 630 which will tie in by the way just across from Hospital Center Boulevard. The table that we're showing here, the top is just a repeat of what you saw at the bottom. The top table here is basically what you would have with the proposed UDA development but with only those VDOT improvements, the interchange and the relocation of 630 in 2020. At the bottom of the table, we see we've gotten rid of all of those levels of service F conditions during both the a.m. and p.m. peak hour. The mitigation... the congestion mitigation improvements that would be required to achieve that reduction in congestion that you're seeing in that bottom table are listed below. At Hope Road and Route 1 we're recommending that you provide a separate left turn lane in each direction along Route 1 to allow you to provide separate left turn phasing. Today, you've got what you call split phasing, which is relatively inefficient, every approach of that intersection must move separately, which causes

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an extreme amount of delay today and it would be exacerbated with the additional trips generated by the UDA without those left turn lanes. At Courthouse Road, the improvement would be very similar, we're proposing also adding a single northbound and southbound left turn lane at that intersection as well to allow you to achieve the same condition of Hope Road, where you would be able to provide a separate left turn phase instead of having the split phasing of traffic. We also suggested some reconfiguration of the existing lanes on Courthouse Road. So no widening but basically today you've got a shared through and left turn movement and a separate right turn movement. In the future condition, that right turn movement that you have today at Courthouse Road is diverted to the relocated 630, so it allows you to actually flip flop your lane designation so that you can provide a separate left turn lane and a shared through right. That allows you to have concurrent traffic flow along Courthouse Road which is something that you don't have today and that also helps reduce delay. And it significantly would reduce the 2020 delay with the UDA trips from level of service F without that improvement to level of service D, which is representative of not congested conditions basically. It's not free flow but your average delay per vehicle would be less than a minute. You're talking about on average, when a person approaches that intersection, they would wait there for thirty-five to fifty-five seconds so it's reasonable, something that won't get drivers frustrated. And, at the third intersection that we examined, Route 630 relocated and Hospital Center Boulevard. We initially assumed without the UDA development, you know without seeing a concept of VDOT... a VDOT concept for how that intersection would look, we did some analysis to figure out what lanes would be needed for that particular new intersection to operate at level of service D without the UDA. And then for this table here we added a free flow right turn lane for the movement from I-95 to go south onto Route 1 off of 630 relocated. That free flow right turn lane would allow that particular intersection to operate at levels of service C & D which is very reasonable operating conditions with the additional traffic from the UDA.

Ms. Kirkman: Could you go back one slide please?

Mr. Parker: Sure.

Ms. Kirkman: Okay. Could you go forward. How is it that you decided on only improving it to level D and not level C. Because I thought at one point, Jeff, didn't we have level C as a standard in some of our Ordinances?

Mr. Harvey: That level service C is what our Comprehensive Plan recommends. It does state though for development projects, if a development project has come along they shouldn't further degrade the level of service if they can't achieve level service C they need to keep it the same or improve the level of service.

Ms. Kirkman: So I guess I... if our Comprehensive Plan has level of service C as the ideal or the target to shoot for, how did like how did you come up with D as the standard?

Mr. Parker: D was chosen as the standard because it is the worst uncongested condition that you would typically see on a roadway. We were trying to minimize the amount of impacts that you would see due to the need for additional lanes and so forth. But still provide a reasonably good level of service of which D is.

Ms. Kirkman: Were you aware their Comprehensive Plan called for level of service C?

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Mr. Parker: At the time that I did this analysis I was not aware of that and so we did choose level of service D as an acceptable condition just based on engineering experience with those types of conditions.

Ms. Kirkman: Because it would require the least amount of road improvements?

Mr. Parker: But still provide a very good level of service and a reasonable amount of delay without showing extensive impacts.

Ms. Kirkman: Alright, thank you.

Mr. Parker: Thank you.

Mr. Howard: Thank you.

Ms. Rhodeside: I wanted to also mention that the changes that... or improvements that Jeff is talking about are improvements that are in concurrence with the study that's being done for Courthouse Road and Route 1, so that the two really do agree with each other. We also established recommendations for design guidelines and we did this across the board in terms of design principals that we think should be applied to all of your UDA areas first. And I won't go into reading all of these. You have them in your packet. But they include ways to orient buildings to the street and to create places rather than... places where people want to shop, want to walk and places that have an identity rather than places where people drive from place to place. So those are the principles for both land use and urban design and there certainly are for circulation and then creating those community spaces is part of the underlying motivation for the open space and protecting the natural areas within the UDA's. Then we went on to talk about design guidelines for district's specific UDA's within the Courthouse UDA area. So in the historic district it's encouraging buildings with smaller floor plates and massing at a village scale to incorporate the historical use of Aquia sandstone or similar materials that have been traditionally used in Stafford County to extend open space along stream corridors in front of the Courthouse Complex and the Courthouse Road to create a green approach to the village center. In the new downtown to allow for unlimited building footprint sizes in the core area to encourage ground along with the zoning requirements for that area. To encourage ground floor shop fronts in areas where retail frontage is noted. To encourage strong visual and functional relationships between the downtown and the hospital and to integrate civic greens into the streets scape system as indicated in the UDA concept. And then for the Southern Courthouse Commons Area, to insure strong connectivity across Route 1, including at least one pedestrian crossing, to maintain and undisturbed buffer along Route 1 to continue a parkway character, north of 742 and to make open space connections south and publically own land and to Accokeek Creek. There are a number of lessons that we learned from the small area planning process for the Courthouse UDA that we think are applicable when you tackle your other UDA's. And they include creating a smaller area plan for each of those UDA's to include a well defined and meaningful public engagement strategy as you plan each one of those UDA's. To establish a set of TND planning principals to guide all of your UDA's small area plans. To create and adopt a clearly communicated, easy to use zoning option, to support the communities vision for each area. To submit each UDA's small area plan for a VDOT Chapter 527 review and to continuously educate the public, the development community and future business investors about the advantages of developing within designated UDA's. We have reviewed your Comprehensive Plan. We think that it is very clear and very strong in describing Urban Development Areas. But we think that there are a few additional pieces of text that should go along with the small

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area plan and with the whole UDA concept and we have... I won't go through all of these now, but we have noted where in each chapter we would recommend adding some additional text or describing things somewhat further. The major recommendations are to add a separate zoning category for a new Urban District to implement the counties UDA's. To add a new section H, Urban Streets to provide cross sections that are applicable to the UDA's and to adopt the Courthouse Area Plan as a separate document but referred to in the Comprehensive Plan. So here's the concept and in looking at the zoning implementation for this UDA, Code Studio has put an overlay on the land use concept that describes five different urban districts and they range from UD1, which is a residential attached district. UD2 Residential townhomes, UD3 Residential mixed use, UD4 mixed use Village Center and UD5 mixed use urban centers.

Mr. Howard: Ms. Rhodside, what's the blank area? There's an area that has no designation to it, it's predominately red, it looks like with a red circle in the center of it.

Ms. Rhodside: Oh that area is actually not part of...

Mr. Howard: It's not part of the UDA?

Ms. Rhodside: Well that area was not part of the UDA.

Mr. Howard: Okay.

Ms. Rhodside: We are in fact recommending the possibility of changing the UDA boundary to include that part, but that's still something that's under discussion.

Mr. Howard: What's in that area, do you know?

Ms. Rhodside: That area... do you want to talk about what's in that area now?

Mr. Harvey: I believe that area is on Route 1 opposite of Hospital Center Boulevard. There was some discussion about maybe that was more of a retail oriented corner or set of corners. It may not be necessarily as pedestrian oriented as you see other parts of the area.

Ms. Rhodside: It's also a topographically challenged area, particularly with the addition of the possibility of the connection to 95.

Mr. Howard: Right.

Ms. Rhodside: And so our concern was what will happen to that area if it's not included as part of the UDA. But we... so our recommendation is that it become a commercial area. It really... to us because of the topographical challenges doesn't... is not really suited for many other uses. But the question is whether it should be included in the UDA or not included in the UDA area. The zoning also looks at building types that would be used within the Urban Development Area. A full range of building types from detached homes all the way through townhouses and mixed use structures down to cottage courts and carriage houses. And talks about for each district which building types would be appropriate within each district. And then very much as most zoning codes talks about the details of citing building placement height facade etcetera, but illustrates all of these very clearly to give both the developer and the County and the public and idea of what each of these areas could clearly look

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like. And then the code also recommends the street types that would go into those areas and the dimensions for each of the different types of streets. Mike to do want to talk about the next steps?

Mr. Zuraf: In the table with the next steps, given the timeframe that we're under, under the Urban Development Area Grant, the County was given an extension basically to the end of February to complete the grant. Which does involve the adoption of the small area plan as an element of the Comprehensive Plan and the adoption of the Zoning Code Amendment to implement that plan. So that's what you have before you tonight and we envision to get through the full process with the Board of Supervisors is the Planning Commission process going through December of this year and then January and February for the Board to conduct a public hearing. And we know that you were given... in the plan there are suggestions for additional amendments to the current Comprehensive Plan. I believe that to meet the requirements of the UDA grant it would be acceptable to move forward with this Courthouse Urban Development Area Plan and then afterwards... or as that's going through the process, look at the other recommendations to the Comprehensive Plan document and make those adjustments as deemed necessary. And as I pointed out in the memorandum to you there are... some of the issues that we're still working on, is the VDOT Chapter 527 Traffic Impact Assessment documentation as Jeff mentioned. That's being finalized we should get that next week. We'll submit that then to VDOT and anticipate getting that information reviewed and resolved before Board adoption of this to meet VDOT requirements and as mentioned also there are recommended adjustments to the UDA boundaries. That one area of recommended more highway commercial in and around the access the revised and amended Courthouse Road access from 95. And then also there is an adjustment, a slight reduction to the UDA recommended on the east side of the Courthouse UDA where the major power line easement runs. You end up with a sliver that was in the UDA and its recommended that that area go outside of the UDA. So, those would be recommended follow-up considerations to adjustment to the land use map.

Mr. Howard: And that would take place post adopting this small development plan.

Mr. Zuraf: Yes, that would be our recommendation on that.

Mr. Howard: When you say that, because a lot in the attachment 2, actually there are two attachment two's. If we were to take action tonight it's not clear to me what we're taking action on.

Mr. Zuraf: We're taking action on moving forward the Courthouse Urban Development Area Plan to public hearing to adopt it as an element of the Comprehensive Plan.

Mr. Howard: So is that just section 3?

Mr. Zuraf: That is...

Mr. Howard: In this attachment?

Mr. Zuraf: ... the entire document of both attachment twos. It's a... the first attachment is the main document and the second is the appendix.

Mr. Howard: But contained in that document, you have transportation recommendations, you have the implementation recommendations. You also have other elements that you have described that aren't completely finalized.

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Mr. Zuraf: No those are all finalized. But it also includes within their recommendations for amendments, other amendments to the current comp plan that was adopted in December of 2010.

Mr. Howard: So in this document that says attachment 2 and it has the nice color copy on it there...

Mr. Zuraf: Yes.

Mr. Howard: Everything that's in here is ready for prime time, is that what you're saying?

Mr. Zuraf: Yes, and the appendix though we would just replace the adjustments that we were recommending and provided to you this evening to the proposed Ordinance and that Ordinance which is included within the recommendations and appendix that would come to you in an Ordinance form of course but it's included as recommendation within this plan.

Mr. Howard: So in the appendix is it titled... so A is public outreach, B is the courthouse UDA, what would...

Mr. Zuraf: It's Appendix D.

Mr. Howard: Appendix D, okay.

Mr. Zuraf: Appendix D would be basically placed into... it would remain in this document but then we would place it in Ordinance form for that action.

Mr. Howard: Okay. Alright are there any questions of staff?

Ms. Kirkman: Yes are we going to have the TIA done before our public hearing?

Mr. Zuraf: The documentation will be complete whether we get VDOT comments back. I don't know if that would be the case. We can definitely ask VDOT to see what they can do, but we may not have comments back from VDOT.

Ms. Kirkman: And could you just clarify, you're saying the Board has to adopt the small area plan. Was that a requirement of the contract with VDOT?

Mr. Zuraf: Yes.

Ms. Kirkman: That they adopt the small area plan that's a requirement of the contract?

Mr. Zuraf: Yes, under the UDA grant contract, yes.

Mr. Howard: Mr. Hirons.

Mr. Hirons: Mike and this may be a question for Ms. Rhodeside as well. How much of the area in particular, I think it's the historic little section...

Ms. Roadside: Um hmm.

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Mr. Hirons: ... overlays with the Courthouse Redevelopment Plan that is now already a part of the Comprehensive Plan?

Ms. Rhodside: I actually have a slide about that, can I have the slides?

Mr. Howard: Computer please. Thank you.

Ms. Rhodside: Just keep going.

Mr. Hirons: And part of the answer may... or maybe part of the answer was Economic Development or Economic Development Authority or Agency involved in this.

Ms. Rhodside: Yes and we've coordinated very closely with the Redevelopment Authority and with the Economic Development people. And you see this diagram and it shows on the left the RDA area and the downtown that was defined in the RDA. And on the right it shows the UDA area with the three districts and what's... the changes that have been made between the RDA and the UDA were that in the RDA the Downtown Area for the center was one unit. And what we have suggested is breaking that up into two different districts in the UDA so that... because we think it's important to distinguish between the character of the village center and the downtown area. In addition to that, we rotated the orientation of that downtown from north/south orientation to an east/west orientation. Because we felt that A, it worked better topographically once we'd started analyzing the topography for the area that it worked better in terms of respecting current topography to develop it that way. And also it allowed us to make better connections to Courthouse Road, by turning it around that way and to allow that to move through that area. But you see that most of the structure that was recommended in the RDA is the structure that we have retained for the UDA. And in working with Brad Johnson on this, I think that the two are very compatible.

Mr. Hirons: Okay so then my question also be... to continue would be, should we make adjustments to the RDA plan, basically incorporating this into the RDA plan?

Ms. Rhodside: That's not something I would... I have not heard a suggestion of that.

Mr. Hirons: I think that might be a question for Mike Johnson actually.

Mr. Rhodside: Yes exactly.

Mr. Hirons: We might want to shoot that to if you could Mike.

Mr. Zuraf: Okay.

Mr. Hirons: Thank you.

Ms. Rhodside: Sure.

Mr. Howard: Any additional questions from the Planning Commissioners? Mr. Apicella.

Mr. Apicella: This is a fairly complex and comprehensive package. It's November 2nd, I think we have a couple meetings left this calendar year. Yes, no?

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Mr. Howard: Two.

Mr. Apicella: Two. I realize that we're running against a hard and fast deadline both the Planning Commission and the Board of Supervisors. I guess I'm just checking on the... or the possibility of seeking an additional two weeks for us to do our due diligence to get this right. Look it over and make sure there are not any additional changes or modifications we want to make before we kind of rush this thing through. Not that I'm suggesting that we're rushing it through but this is the first time I've seen the package. Like I said, it's fairly comprehensive. I don't think the Planning Commission has dealt with this kind of a package before so I think we ought to get it right, especially since it's a model for the future.

Mr. Harvey: Mr. Chairman.

Mr. Howard: Mr. Harvey.

Mr. Harvey: I can add some alternatives for the Commission to consider. With the timing of the advertisement, the actual advertisements will run in the paper if I remember correctly on November 22nd and 29th should you advertise for your December 5th meeting. That would mean your next meeting would occur prior to the ads running in the paper. So there may be some opportunity to make minor adjustments to the documents and still be able to not affect the ad. Another alternative would be for the Commission to consider adding a second meeting date in December. That would give the Commission another meeting for you to deliberate about this before you authorize a public hearing.

Mr. Howard: Thank you Mr. Harvey. So that obviously opens up discussion for the Planning Commissioners.

Ms. Kirkman: Isn't another alternative for the Planning Commission to hold a joint public hearing with the Board in the start of the next year, in January or February?

Mr. Harvey: Yes that could be another alternative that would be something that both the Board and Planning Commission would need to agree to.

Mr. Howard: Right and we've done that in the past. The only challenge, you know, not that it's a challenge but the public only gets one time to see it versus two times. But honestly having a public hearing in December I don't know how many people are thinking about coming down to a Planning Commission meeting. Or in January for that matter but it is what it is at this point. So the Planning Commission, you know well certainly we have some options. You know we have seen variations of this over the course of time you know with the Comprehensive Plan and first of all thank you. I know you know Rhodeside has done a tremendous job and so has staff. This is an incredible amount of work that you put into this. And I know you were pulled in many different directions early on, deadlines change we got the extension you know and there were some other things that had happened that you had to navigate through and you've done a very good job. It's a very comprehensive and complete thoughtful draft of a plan that to Mr. Apicella's point, you know we are seeing it tonight for the first time and this finalized format in total so it would be good for people to be able to thumb through that you know over a couple of weeks. So I have to defer to the will of the Planning Commission, we can certainly suggest... make a suggestion to the Board that we do a public hearing in concert and see if there's an appetite. But at the same time, Mr. Harvey you said if we... the November 16th meeting is too late to make a decision on a public hearing unless we do a second meeting in December.

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Mr. Harvey: That would be correct because of the timing when the ads would run for December 5th we would have had to already have the ads to the paper and they would be processing them in preparation for them posting them and running them. Typically they ask us to have the ads to them four weeks prior to the hearing so that kind of puts us in a situation where we were at where the Commission would need to authorize a public hearing tonight for December 5th based on your meeting schedule. So if the Commission were to defer to this to another meeting in December, there may be opportunity for you to authorize a hearing at your November 16th meeting. So that would be the alternative.

Mr. Rhodes: Mr. Chairman I would just suggest that if we... if we pass tonight and to consider this further we ought to be pressing... I think we ought to be pressing hard for a joint public hearing. In that if we do if we keep the normal schedule and we do one on the 21st of December I don't know how advantageous that is for the public either.

Mr. Howard: No it's probably not, probably not. So yes if we don't take action tonight.

Mr. Rhodes: And certainly if we get an indication that the Board of Supervisors is not at all receptive to that then we could always at the next session figure out what additional date in December we want to try and pursue that. But as you get later in that month it's really not doing much for many.

Mr. Howard: No it doesn't really help that out. Anyone else have thoughts they want to share publicly?

Mr. Apicella: Mr. Chairman again I would make a motion that we ask the Board of Supervisors for additional time.

Mr. Howard: Yes but if they say no what's your backup plan?

Mr. Apicella: We would know on the date of the next meeting, their meeting is before ours, whether they would agree to it or not. And if they didn't agree to it, then we could schedule another meeting in December as necessary.

Mr. Harvey: Yes the Board does meet... its next meeting will be November 15th, the day before your November 16th meeting.

Mr. Rhodes: If there is not an appetite for that and we are... what are the normally scheduled date in December would be the 21st so we were just going with the 3rd Wednesday. What reasonably are our other options?

Mr. Howard: Well you could do it the Wednesday before that.

Mr. Rhodes: Yes so we could do it the... we're having one on the 5th so we could do it the 14th I guess. That's at least not...

Mr. Apicella: Actually we are having one on the 3rd.

Mr. Rhodes: No we're doing one of the 5th.

Mr. Apicella: I thought we changed it to the 3rd.

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Mr. Rhodes: It was the...

Mr. Harvey: It was the 7th.

Mr. Rhodes: It was the 7th and we moved it to the 5th.

Mr. Howard: Monday, the 5th.

Mr. Apicella: Sorry.

Mr. Rhodes: So we can have one on the 5th, that Monday and then we could have another one on the 14th. That at least is not starting to get into really crazy alternate schedule time.

Mr. Howard: Alright so Mr. Apicella you were about to make a motion, are you still making that motion?

Mr. Apicella: I thought I did, again, I would move to ask the Board of Supervisors for additional time for us to work on this matter with the notion that we would ask for a joint hearing in January.

Mr. Rhodes: If I could just ask for clarification. Is it their option to give us additional time or are we saying overall time to go a more linear schedule of our public hearing being in January and then them holding one after so that they're extending the whole process? Or are we just... not really asking for more time just asking for their consideration of a joint public hearing in essence.

Mr. Howard: Yes the more time I don't think is their option, I don't think it's within their purview to do that. Unless they want to forfeit the... the County would then have to pay for the all of the work Rhodeside did, they would lose the grant.

Mr. Apicella: I think in... I mean I asked this question earlier and the response was we would be pushing them up against the wall. But it's still possible that they could have the public hearing prior to the February 28th deadline and decide on the matter at that public hearing date.

Mr. Harvey: That's correct. The Board would have to hold a hearing prior to the end of February. The question is, how much time should the Board have to be able to consider this issue as well? Under normal process, items flow from the Planning Commission, the Board holds a hearing, they can adopt that time or if they have like the Commission issues and questions they often will defer maybe ask staff to come back and make minor modifications. So if... the longer the issue gets delayed for the Board, the less likely they have opportunities to make adjustments as well.

Mr. Rhodes: And do you have... obviously the potential there with new Board members, new Planning Commission members or whatever.

Mr. Howard: Right. Yes you have a lot of unknown factors. So Mr. Apicella can you restate your motion?

Mr. Apicella: I would move that we ask the Board of Supervisors for a joint public hearing in January to dispense with this matter.

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Mr. Howard: Is there a second?

Mr. Rhodes: Second.

Mr. Howard: Okay. Discussion?

Mr. Rhodes: Mr. Chair, I don't know what's better or what's worse, but I accept that there are concerns and interest in wanting to digest this and I think that's reasonable and I we're in a particular odd spot of a lot of just transitional items and I think really the only probably as good a way as any to get through that will be to... the form of a less traditional approach which is a joint public hearing. But that we can all work through it together if they could get one set in January then we have a couple of sessions to kind of pound through it, so, I think it's probably as good or an approach as there can be.

Mr. Howard: Alright any other comments?

Mr. Fields: I guess it's really kind of a... there's no good answer here. My concern of course is that you only have one public hearing.

Mr. Howard: Right.

Mr. Fields: You only have one public hearing with... between four to six members who have never looked at a land use thing before. Let alone one of the most complex and innovative pieces of land use legislation ever considered in Stafford County. No disrespect to whoever is going to be serving on the Board in the Planning Commission. I wouldn't have wanted my second meeting on the Board of Supervisors to look at something of this magnitude. Well actually I did, I had to look at the Embrey Mill rezoning my second meeting, so and that was bad enough. And that was not anywhere near as in many ways, I mean we're getting our head around completely new concepts. But you know I'm just sort of throwing that out there we probably need to try both things. It's going to be really up to... I would ask in that recommendation that if we defer... if they agree to defer, that in that recommendation it's acknowledged that however things turn out next Tuesday that the potential selections for Planning Commission choices, while they can't be appointed until the Board meets at the first of the year. That those potential selections along with the Supervisors Elect are requested to make an extra special effort to attend Planning Commission and Board meetings and possibly even work sessions so that the public is served by having people doing... it's going to require heroic... and I'm sure that whoever wins this cares about the County enough to make that. It's going to require a little bit of a heroic task on their... effort on their part. And if that's okay to add, Mr. Rhodes will accept that as kind of a... it's not exactly an amendment just a request to amplify that the only way that will work is that the people who will be serving in January... come January are willing to participate a little bit ahead of schedule.

Mr. Hirons: Before you answer, if I could ask is there an ability to have new members of the Board and new members of the Planning Commission sometime in the first two weeks of January get a little briefing from perhaps Ms. Rhodeside on this plan seminar, maybe some of us attend as well to help get them up to speed as quickly as possible. In addition to encourage them to attend the Planning Commission meeting, workshops, etcetera.

Mr. Rhodes: Just three or more you have got to advertise.

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Mr. Zuraf: Yes and staff would need to help with that actually part of the whole extension is that all consultant work ends at the end of December so we may not have that luxury after the end of the year.

Mr. Rhodes: I would just... I was just going to share as a follow on to Mr. Fields line of thoughts. I was thinking the exact same thing. You got new Commissioners, new Planning Commission members but actually I'm not sure that that's... that I weighed that with the fact that you could use this Planning Commission to deal with it then hand it off to the new Board of Supervisors. I'm not sure that it's not better to actually have the new sets of new Supervisors and their Planning Commissioners kind of wrestling through this new stuff together. Because they will... in the January and February meetings they can rely on each other versus just throwing over to the Board of Supervisors. So I was actually initially thinking the same way your logic was but I kind of evolved to at least they could help each other along in those first couple of sessions when they got to deal with it.

Mrs. Hazard: Could I seek some clarification? So the consultants work ends December 31st no matter what, is that correct? Okay, then you clarify then these provisions of the contract, because I have several questions in that regard.

Mr. Zuraf: Okay.

Mr. Howard: Go ahead.

Mrs. Hazard: Okay, I mean in terms of the consultants work ends December 31st then it's over even if we... there is not going to be presentations to the Board of Supervisors by the consultant under any of these scenarios.

Mr. Zuraf: Staff will take over at that point.

Mrs. Hazard: Okay. The in jeopardy part of this grant is as I heard it that we had to adopt the plans. Wouldn't it be completion of the plans, that something was completed by the consultant... I mean, I don't... not meaning to get caught up here, but it seems... I'm trying to understand what the time deadline imposed here is and I agree I have not read the contract but I'm not sure.

Mr. Zuraf: Yes, the consultant will need to get all the documents completed to us as you know... which they technically have done. But now it's down to the point of going through the Planning Commission and the Board review where modifications may be needed which... they will be providing us all the you know, the plans and the forms where staff will be able to make adjustments to the documents where needed after that.

Mr. Howard: I think the question is, what is the specific language if you know, or don't know. Maybe Ms. Rhodeside knows on the adoption of the plan. So in other words, it seems like VDOT tied the funding of this grant to implementation.

Mr. Zuraf: Right.

Mr. Howard: Is that correct or not correct?

Mr. Zuraf: Yes and I don't have the document in front of me.

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Mr. Howard: Well is that statement correct? Or the adoption of a plan? Okay.

Mr. Zuraf: Adoption of and as far as any specific language...

Mr. Howard: Of a small area plan

Mr. Rhodes: Yes I understood to be an adoption of a plan whatever the final version is or...

Mr. Howard: Right so that's... and we've known that, we've known that, the issue is...

Mr. Rhodes: Or we pay back the money.

Mr. Howard: Well the issue is as things happen, like they're happening tonight. We stall, we need more time, we get you know Stafford County is known for that. And so now here we are and we have to you know, we can either do this or we can you know, I'm not picking on anybody but in my mind abdicate our responsibilities and let the next person take over.

Mrs. Hazard: I don't think I'm trying to abdicate, I'm trying to understand why we are saying that everything has to be done by February when actually the consultant is done December 31st.

Mr. Howard: No the grant, the funding...

Mr. Zuraf: The reasoning why and the reasoning for our...

Mr. Howard: This is the funding piece.

Mr. Zuraf: ... our request was when we made the request was well we can't request a deadline of December 31st because the Boards by-laws where their not going to take land use actions and so we said well we actually made a request into January they granted it through February and VDOT has set and maybe Deana can clarify, I think VDOT is setting that limitation of December 31st for all consultant work for all the UDA kind of grant work being done across the State as December 31st. So it's not just us it's...

Ms. Rhodside: That's right, that's right the contracts that have been given out for all of the UDA's across the State end December 31st. The... VDOT has allowed or granted additional time to jurisdictions to go through their approval process on a case by case basis. But that has not adjusted the contracts, the contractual agreements that VDOT has with the consultant teams and so those end December 31st. And the extensions that VDOT has granted have all been with the understanding that the consultants work would end December 31st.

Ms. Kirkman: But what I'm trying to understand is my colleague from Hartwood was also trying to understand. This contract binds the Board to adopt a small area plan?

Ms. Rhodside: The grant that was given to... made to Stafford County for technical assistance has as one of the provisos in the grant that a small area plan be adopted. And that and option for zoning implementation be adopted... be provided as well.

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Ms. Kirkman: So the zoning piece does not have to be adopted. And does the contract state that the plan has to be adopted by the end of February or only that it's eventually adopted?

Ms. Rhodeside: My understanding is that all the adoptions have to be done by the deadline that VDOT has established for Stafford County, which is the end of February.

Mr. Harvey: Yes.

Ms. Kirkman: The plan but not the zoning piece.

Mr. Harvey: The County has to adopt an Ordinance that would allow the implementation of the plan for a land use district that has by-right provisions that implement Traditional Neighborhood Development. This Ordinance does that. Some aspects of our TND Ordinances as currently written does that but it's not fully compatible so that's why through this process we have created a new zoning category that would fully be compatible with Traditional Neighborhood Development as envisioned in the UDA Statute.

Ms. Kirkman: What is it about the PTND Ordinance that's not compatible with the UDA?

Mr. Harvey: Right now the PTND Ordinance has a maximum density of ten dwelling units per acre with a total track. So that's a potential issue. Also there is a number of factors that deal with walkability that are in the new Ordinance that aren't as robust in our current requirements and PTND.

Mr. Howard: Alright so we still have a motion on the table and we're in discussion. Any other questions? Thank you Ms. Rhodeside.

Ms. Kirkman: I have a question for Mr. Harvey.

Mr. Howard: Yes.

Ms. Kirkman: So could the County meet the requirements of the contract by making some minimal amendments to the PTND as an interim step?

Mr. Harvey: That might be possible. I know that in previous discussions with the Board with regarding to this matter. There was analysis done of our current codes and what needed to be done and the conclusion was to create a new zoning category. And that was partly because the Board also wanted to have more availability for form base code. So that's what led us down this path of creating a new zoning category. So this was at the Boards direction based on guidance that we provided them.

Mrs. Hazard: I would make a suggestion if in some way that we request that the Board authorize for incoming members or something before the end of the year because under no scenario will the Board of Supervisors have the presentation done by Rhodeside and Associates, under any way that we vote this. If I was an incoming Board member I would certainly want to have the consultant in front of me now I don't know how we accomplish that but the money runs out December 31st or their work does and if like I said if I was voting on something this huge I would want the consultant that drafted it to be in front of me.

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Mr. Apicella: Could that be affected by the Chairman just submitting a letter to the current Board of Supervisors and the Supervisors elect as well as the Planning Commissioners elect?

Mr. Howard: I think staff could coordinate such a meeting if that in fact is the desire of the incumbents and that invitation can go out. You know I don't think you can compel them but I'm sure whoever gets elected would be more than happy to attend such a meeting. That doesn't stop the issue, I also would have complete faith in staff if their up to speed on this and have gone through every step of the way with the consultants. In fact, in many cases you hire consultant to transfer knowledge and that knowledge transfer takes place and then the incumbent staff is up to speed in almost all cases otherwise you wouldn't bring the consultant back because they didn't do their job. So they... that knowledge transfer, I'm sure has taken place and that's typical what you would see any time you're on an engagement and you go on a contract with a consulting firm. So I'll defer like I said to the will of this group but I'm not sure I need anything else myself. Personally I've been through the process a lot of good work. I get the concepts, you know, can I read it, yes I am certainly going to read through it again. And if we had scheduled a public hearing, I would have read through it again and made my notes and comments, and I would have come prepared like I would normally. And I think everyone else would do the same. So I you know, Steven you're at a little bit of a disadvantage because you are newer. If it was Mr. Mitchell still here I'm not sure that same, you know, issue would exist. But I certainly understand your perspective on that so.

Mr. Rhodes: Mr. Chairman I would just... once again submit that as we go forward with this if the outgoing... if the Board is not receptive then what we are also committing to here is having a second you know session in December to facilitate a public hearing.

Mr. Howard: Correct. Right, that is right.

Mr. Rhodes: That is unstated follow on to that motion.

Mr. Howard: So we might be sitting here December 14th which if that's the case in my opinion that's fine, that's the will of the Commission so. The Board may say no we don't think having a joint meeting on this is good or they may say no we've done that in the past and that worked out well and that's a good idea, so I don't know. I'm not sure. Alright, so any other discussion? Alright we'll call for the vote. So all those in favor of requesting that the Board of Supervisors to hold a joint session and then... did the motion maker and the seconder agree to Mr. Fields request in terms of making some type of you know provision or overture to get the new people up to speed in whatever case, well we would add that in the motion. Did you agree to that Mr. Apicella?

Mr. Apicella: Sure.

Mr. Howard: Okay.

Mr. Rhodes: Yes.

Mr. Howard: Mr. Rhodes. So that being part of the motion all those in favor...

Ms. Kirkman: Mr. Chair.

Mr. Howard: Yes.

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Ms. Kirkman: I'm going to abstain from the vote. I will not be here in January so I'm just going to stay out of this one.

Mr. Howard: Fair enough. Any other comments before I call for the vote.

Mr. Rhodes: I'm sorry I'm just trying to think mechanics. If their inclined to that then at the first session in January...

Mr. Howard: Their first meeting...

Mr. Rhodes: ... will they be voting for public hearing?

Mr. Howard: No their first...

Mr. Rhodes: Because their first is administrative, right?

Mr. Howard: Yes it's an organizational meeting, typically.

Mr. Rhodes: So how do we hold a public hearing... we go ahead and agree... would we find some language at our next session and suggest that that be the language they use for the public hearing announcement and whatever?

Mr. Howard: No I think what would happen... what's happened in the past when we've done a public meeting in tandem, we voted as a body...

Mr. Rhodes: Yes.

Mr. Howard: ... and then they would also vote as a body, independent and we will know the schedule of the meetings, I would think by the December 5th meeting. So if we don't hold a December 14th on our own with a public hearing, I would think we could at least vote for a public hearing on the 5th ...

Mr. Rhodes: December 5th, okay.

Mr. Howard: ... with a date specified in January. And that gives staff plenty of time to put all the advertisements together I would think. Right, is that correct?

Mr. Harvey: Yes.

Mr. Rhodes: But then does the Board have to separately vote for a...

Mr. Howard: Yes.

Mr. Rhodes: ... I am just trying to remember, a public hearing. When would they be able to do that, what's their schedule like?

Mr. Harvey: They meet November 15th so they could agree to a joint hearing. Probably they would want to set the hearing date at their November 15th meeting would be my guess. Else wise they could make a decision on a hearing date in December.

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Mr. Rhodes: Then no later than December 5th we would vote on what we're sending to public hearing.

Mr. Harvey: Yes.

Mr. Rhodes: To a joint public hearing.

Mr. Harvey: I think that the Board meets December 6th so...

Mr. Howard: Right. But we meet on the 16th as well, right? So we will know the day after their meeting whether or not they're on Board with this or not so.

Mr. Rhodes: Okay, I just didn't know how that would work, thanks.

Mr. Fields: That meeting also of course appears after the elections and the constitution (inaudible).

Mr. Harvey: I guess we would have to also find out from the Attorney whether the Board would have to suspend its by-laws to take that action.

Ms. McClendon: That's actually correct. The Board would have to suspend its by-laws to even authorize that extension of time because this is a land use issue. But I also I wanted to point out that the Board doesn't adopt its agenda... or excuse me it's meeting schedule for the year until its organizational meeting in January. So I'm trying to schedule the meeting... excuse me a public hearing in January without know the Boards schedule it's kind of iffy at best. Just to be aware of that as you make your vote.

Mr. Howard: That was very good information from both of you. So....

Mr. Fields: We could have saved the last half hour if we just...

Mr. Howard: I am not going to support the motion. I think this particular Planning Commission needs to take this up in the public hearing. I think it would be good for Ms. Kirkman and Mr. Fields and myself, I'm not sure what's going to happen with the election either to be part of this. We have been through this for the last several years in terms of watching this grow and evolve and we certainly can help add some commentary and probably should so I probably won't support the motion based on that, I'm changing my mind.

Mr. Fields: Well if it's any consolation if it's that December date is not available for me so I won't be available for that public hearing... either public hearing.

Mr. Howard: Well even if we did the 5th.

Mr. Rhodes: Even the 5th?

Mr. Fields: The 5th, if later on I'll be late to that meeting. I have conflicts in the earlier part of that evening already.

Mr. Howard: Alright.

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Mr. Fields: Public hearing 7:30.

Mr. Fields: I probably couldn't do that. 8 o'clock.

Mr. Howard: Alright, so I'll call for the vote. All those in favor of the motion on the table which has been stated signify by saying aye.

Mr. Fields: Aye.

Mr. Apicella: Aye

Mr. Howard: Opposed, Nay.

Mr. Rhodes: Nay.

Mr. Hirons: Nay.

Mrs. Hazard: Nay.

Mr. Howard: Nay. And one abstention? Okay. So the motion did not carry 2... what is your vote, 2-4-1.

Mr. Rhodes: Make sure of your count.

Mr. Howard: I'm sure of the count, I verified it.

Mr. Apicella: So the alternative?

Mr. Howard: Would be to make a motion.

Mr. Hirons: The alternative is to... I'll move to move to public hearing the Small Area Plan for Courthouse UDA for December 5th.

Mr. Rhodes: I will second all motions on this topic apparently.

Mr. Howard: Alright, second by Mr. Hirons, I mean Mr. Rhodes. Motion made by Mr. Hirons. Any further discussion?

Ms. Kirkman: Mr. Chair, I'm going to oppose that motion. First off, I want to say I think that I'm very concerned that the traffic analysis that's been done so far only upgrades... only maintains a level service D. I'm also concerned that we don't have VDOT comments for our consideration and probably won't have them by December 5th and so I just on the transportation issue alone I cannot support this. I have other issues but that's the main one.

Mr. Howard: Okay, any other comments?

Mrs. Hazard: Mr. Chairman I am going to support the motion although I do have some grave... just concerns about how quickly on something that I feel fairly strongly about on this Form Based Code is

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making sure that we get it right. I do hope as we go through the process as we continue to really discuss this we've just had the presentation tonight... that if there are some major things that we do end up finding that we will have the mechanisms to deal with them as we go forward.

Mr. Howard: Thank you. Any other discussion?

Mr. Rhodes: There's just no doubt this is a bit awkward and difficult timing and difficult in many respects and I just don't think there's a perfect way forward as is obvious by all of the positions I'm taking on it. Thank you Mr. Chairman.

Mr. Howard: Yes I agree with everyone's comments. I'm hoping that VDOT will have us, you know their approval of the transportation impact analysis that's in here. I know we'll have the final by the public hearing. And remember as Commissioners we can make adjustments and post the public hearing and advance it onto the Board of Supervisors with our recommended changes and adjustments that's why you do that. But I think it's in the best interest to get this out into the public. There's a lot of public input that's gone into this, not only in this particular mall urban development but in the RDA's as a whole and even a comp plan over the last several years. And I think we should just continue with this and... it's not ideal by any stretch of the imagination so just come prepared for the 5th I suppose. I will call for the vote. All those in favor of the motion which is to move this to a public hearing on December 5th signify by saying aye.

Mrs. Hazard: Aye.

Mr. Hirons: Aye.

Mr. Rhodes: Aye.

Mr. Apicella: Aye.

Mr. Howard: Aye. Opposed Nay.

Ms. Kirkman: Nay.

Mr. Fields: Nay.

Mr. Howard: Okay the motion carried 5 to 2.

Mr. Rhodes: Mr. Chairman.

Ms. McClendon: Mr. Chairman. I'm sorry I was looking for clarification on that last motion, it's for a Comp Plan Amendment and a Zoning Amendment as sent down from the Board.

Mr. Howard: Yes

Mr. Rhodes: Comprehensive Plan Amendment and Zoning Ordinance Amendment.

Mr. Howard: And Zoning Amendment, okay. Courthouse Urban Development Area Plan, yes. So the motion... I took the motion to include both of those. Thank you.

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Ms. Kirkman: Could I get... but I just want to make sure I understand correctly the timelines. Supposedly the contract requires the adoption of the plan but not the adoption of concurrent zoning. Is that correct? What I understood the consultant to say was it only... the contract itself only requires the preparation of the...

Ms. Rhodside : And you need to provide a zoning option that will implement the plan.

Mr. Harvey: That's correct.

Mr. Howard: So we need the zoning option included as well.

Mr. Harvey: Yes and this is the direction that the Board has given staff as to create this new Ordinance that has Form Based Code in it.

Mr. Howard: Right.

Mr. Rhodes: And certainly whoever's around in January and whoever's not we can have some hopefully some good... everybody will work to have good transition on this issue because this one's going to be a weird one hitting them right up front.

Mr. Howard: Yes no question.

Mr. Zuraf: And Mr. Chairman if I may, if you at your next meeting if the Commission wants to have any discussion of this item to get more clarification on things, I guess that might be a good thing to do.

Mr. Howard: Yes, absolutely. So if anyone has additional questions obviously the version that's here will be advertised but there's no reason why you couldn't come in and talk about it and make some notes in preparation of the December 5th meeting.

Mr. Rhodes: I was going to mention if we could just have it somewhere there on the agenda just to be... just as folks are still looking forward getting prepared for the 5th just if there were any open items or questions.

Mr. Zuraf: And when you're reading the plan this weekend, having nothing else to do, if you have any questions for them to meet in advance at all.

Mr. Hirons: In particular Mr. Zuraf, the one thing I'd like answered was the question I made, what if any action Economic Development would recommend with regards to the redevelopment plan that is already adopted as a part of the Comprehensive Plan.

Mr. Zuraf: Okay, yes sir.

Mr. Howard: Mr. Mayausky I couldn't...

Ms. Kirkman: Could we... before Mr. Zuraf leaves could we get a copy of the slides that were presented tonight?

Mr. Zuraf: Sure, definitely.

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Ms. Kirkman: Thank you.

Mr. Howard: Mr. Mayausky did you want to address the Planning Commission again?

Mr. Mayausky: No I'm just here if you have any questions on item 10.

Mr. Howard: I didn't realize that, okay. Well I want to make sure... thank you. Okay that brings us up to item number 10 which is the Wetland Mitigation Bank. We will here from Mr. Lott on this.

10. **Zoning Ordinance Amendment; Wetland Mitigation Bank (Time Limit: January 19, 2012)**
(Authorize for Public Hearing by: December 5, 2011)
(Potential Public Hearing Date: January 18, 2012)

Mr. Lott: Good evening Mr. Chairman, members of the Planning Commission. My name is Mike Lott and I'm an Environmental Planner with Planning and Zoning. I'm just... as you know obviously the Board at their October 18, 2011 meeting approved Resolution R11-286 which refers the Wetlands Mitigation Banking Ordinance back to the Planning Commission for consideration. R11-286 also authorizes the Planning Commission to make modifications to the Ordinance as it deems necessary and appropriate. There were several questions raised at the September 21st meeting regarding Wetland Mitigation Banks. One was whether... or how a proposed mitigation bank may be affected by an existing conservation easement, if there was an existing conservation easement on the property. I spoke with our local representative of the Army Corp of Engineers and she said basically that all Wetland Mitigation Banking projects would be reviewed under their own merit. But that an existing conservation easement may make the site you know less suitable you know for Mitigation Bank. But it would not preclude if there wasn't a conservation easement there but you know they put a Mitigation Bank in there it wouldn't stop them from putting a conservation easement on the rest of the property that is not... that is outside of the Wetland Mitigation Bank, if that makes sense. So the one that's before us now, the Hampsted Farm they're going to it's a six hundred acre farm with three hundred acres of it will be under an easement within the Wetland Mitigation Bank, but they could in theory if they wish to put the rest of it under a different easement either through say the Virginia Outdoors Foundation or if the County had the money to do it under the PDR program. The other question that was raised was how the establishment of a Wetland Mitigation Bank... how it would be... what effect it would have on property tax values of that property. This is why Mr. Mayausky is here. I believe a memo was given to you tonight where he states that, you know, basically the creation of Wetland Mitigation Bank would not cause property values to increase at that bank. If you have particular questions about property tax values in relation to Wetland Mitigation Banks I'm going to certainly defer those to Commissioner Mayausky rather than try to answer them myself so if anybody has any questions on that I would...

Mr. Rhodes: Does anyone have any questions of staff or Mr. Mayausky?

Mr. Apicella: I have a question.

Mr. Rhodes: Mr. Apicella.

Mr. Apicella: I sent an email to Mr. Harvey and I just asked him to identify the pros and cons of approving Wetland Mitigation Banks by-right versus pros and cons of doing by a Conditional Use Permit.

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Mr. Lott: I was planning to get to that later on.

Mr. Apicella: Awesome.

Mr. Lott: I just wanted to ask if Mr. Mayausky could go home if you didn't have any more tax question.

Mr. Howard: Are there any questions of Mr. Mayausky? And you wanted him to come up and answer something anyway right?

Mr. Lott: No, he was just here in case there was a question about property taxes in relation to Wetland Mitigation Banks. So he was being nice, nice to me so.

Mr. Howard: Well Mr. Mayausky could you just come up and I have one question for you. Would you summarize what Mr. Lott just told us?

Mr. Mayausky: I think he said I could go home.

Mr. Howard: Yes. No but seriously on a... is there any concern from your perspective as the Commissioner of Revenue?

Mr. Mayausky: No, there's really not. As I said in an earlier memo the... once the rights are extracted there's a conservation easement put over the property so basically there's little to no effect on the property value.

Mr. Howard: Okay.

Mr. Mayausky: If anything it's going to lower the value because of the presence of that easement.

Mr. Howard: Alright, thank you, appreciate it.

Mr. Mayausky: Welcome.

Mr. Howard: Thank you for staying too we appreciate that. Alright any other questions for Mr. Lott. I know Mr. Apicella had one.

Mr. Lott: I can get to that, so staff continues to support the Ordinance as currently written. I did attach... I don't necessary want to read it to you since you had it. There's an attachment that basically lists conditions, requirements that inter-agency review team places on Wetland Mitigation Banks. I can go through that if you'd like or answer any questions which ever you have. I also as Mr. Apicella asked I put together pros and cons which I believe was handed out to you this evening, I can go over that as well. Is there any questions about the...

Mr. Howard: Well you asked a specific question Mr. Apicella.

Mr. Apicella: Yes I just wanted to know if he could go through the pros and cons of doing it one way versus another.

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Mr. Lott: Okay, sure. I kind of put two sets of pros and cons together. The first was sort of pros and cons of Wetland Mitigation Banks in general. Sort of the pros of the Wetland Mitigation Bank where they are consistent with the Comprehensive Plan, which recommends that environmentally sensitive land, such as wetlands, be protected by the establishment of conservation easements or restrictive covenants. Conservation easements or restrictive covenants are an important component, required component of Wetland Mitigation Banks. As we've discussed in the earlier meetings we currently do not have any Wetland Mitigation Banks within Stafford County, so any impacts to Wetlands that occurs as a result of development in the County and those impacts are mitigated through the purchase of credits, Wetland Mitigation Bank credits. Those purchase of credits are going to banks outside of Stafford County. So this Ordinance would allow Wetland Mitigation Banks being permitted, you know would allow the restoration enhancement of Wetlands and streams within the County. The restoration creation enhancement of wetlands and streams, streamside buffers would improve water quality within Stafford County. The preservation of existing wetland and upland resources associated with the bank can further protect water quality as well as sensitive species, for example at the Hampstead property. Preservation component of the bank, it will protect the threatened and endangered small world pogonia orchard species in the County. Also, conservation easements would help protect the rural character you know of the County as well. Some of the cons that we've discussed about, potential cons anyway if Wetland Mitigation Banks is there's some perception that land owners could be rewarded for being bad stewards of their land. I think for the most part, certainly the larger properties that would be attractive is what Wetland Mitigation Banks often have had farming going on, on them for many, many decades prior to Clean Water Act or the Chesapeake Bay Act. Certainly this farm that's in here now is probably been farmed for well over a hundred years. I know that the stream buffers that they're talking about replanting have not existed since the 1930's so the streams have been impacted for a long time. There was also some concern that landowners may be... this as go out and damage existing wetlands and then try and turn around and you know benefit from that through Wetland Mitigation Bank. I just say that I think that the Army Corp, DEQ and County staff... they would... certainly a firm like Falling Springs LLC is not going to pursue a bank on a property where someone has done that. I mean they might try it independently somehow, but I think the Corp... everybody would realize going out to the site for a site visit that this has been done recently. It certainly would... we have aerial photographs taken every year, it would be fairly obvious from aerial photograph that somebody was out there doing some drastic altering of their wetlands on their property, especially forested wetlands. There's also concerns raised at the Planning Commission and the Board level about possible unintended consequences if a Mitigation Bank was placed on a site that maybe in the future the County may want for future infrastructure of some kind. They are required through the process of creating a Mitigation Bank, they do review the county's Comprehensive Plan to look for potential conflicts. You know the County... there is a public comment period for these mitigation banks or certainly the County can offer up some problems as well. And certainly a mitigation bank doesn't preclude, you know if the County needed to go through for a road or a sewer project. You know, that could be done it would just require hoops and permits so it would have to be done. In terms of the Conditional Use Permit process, pros and cons. The obvious pro I guess is it would give the county greater say over location. An oversight for a proposed mitigation bank in terms of cons it's just really expense and time by the time a mitigation bank would come before the County for a CUP process it's already probably two years into the review process with the interagency review team. Mr. Apicella the interagency review team sort of comprised of the U.S. Army Corp of Engineers, the Department of Environmental Quality they're sort of the two permitting agencies for wetland impacts. Also, Virginia Game and Inland Fisheries is usually a member as well. U.S. Fish and Wildlife Service another sort of interested State and Federal agencies. Also, there is some concern that a requirement to obtain a CUP may be a disincentive to establish a

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Wetland Mitigation Bank in the County, you know if there's similar property outside the County and their process was easier to go through they may choose to do that. Those are sort of what I'd written down, I'd certainly be happy to answer any questions.

Mr. Apicella: Thank you.

Mr. Lott: I don't really have too much else to...

Mr. Howard: Alright, the one thing that struck me early on with the process is when the Army Corp of Engineers indicated that there was really specific conditions you had to meet in order to increase the number of credits, right?

Mr. Lott: Yes.

Mr. Howard: So isn't there a fairly rigorous process that they go through?

Mr. Lott: I have, you know Mr. Parker with Falling Springs, LLC is here he can also answer more specific questions. But yes, they have to meet the requirements that are identified in the mitigation banking instrument in terms of you know they have to do certain things in terms of restoring the streams, planting the buffers, etcetera, before these credits are released for sale. So they have to do certain steps along the way... you know restrictive covenants have to be recorded, you know the things that are sort of identified in that sort of check list.

Mr. Howard: So who is it the Army Corp of Engineers or DEQ that goes in and...

Mr. Lott: It's the whole interagency review team which is primarily the Army Corp...

Mr. Howard: And that whole group gets together and decides okay they've met the conditions, they get these ten credits now. Is that how that works?

Mr. Lott: Yes, I think that essentially how it is. In that Interagency Review Team, I think they are specific people assigned to it from the different agencies and they together you know review it and determine yes at this point you've done X and Y and you are now allowed to release these credits for sale.

Mr. Howard: Okay, are there any other questions of staff at this point, or Mr. Parker?

Mr. Harvey: So Mr. Chairman from a staff perspective we're looking for guidance from the Planning Commission...

Mr. Howard: I would think so.

Mr. Harvey: ... as to whether you want us to make modifications to the Ordinance or want to schedule it for a public hearing?

Mr. Apicella: Mr. Chairman can I make a motion?

Mr. Howard: Yes Mr. Apicella.

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Mr. Apicella: I would move that we authorize a public hearing on December 5th on the Wetland Mitigation Bank Zoning Ordinance Amendment as proposed.

Mrs. Hazard: Second.

Mr. Howard: Okay, discussion?

Mr. Rhodes: That will be our ninety-fifth public hearing on that day.

Mr. Hirons: Yes that is what I was going to say. Our agenda for the 5th is piling up and it looks like we can go into January... January 18th.

Mr. Rhodes: Right.

Mr. Apicella: I'll take that as a friendly amendment.

Mrs. Hazard: Agreed.

Mr. Rhodes: Either way depending on how the calendar is set for January, if we've got to act on it by the 19th that would mean we'd have to have a public hearing... I don't even know what the days are in January with the second or third Wednesday.

Mr. Howard: It's the 18th.

Mr. Rhodes: What's the third Wednesday, is that the 18th? Okay so we'd have to add the public hearing and act on it at that same session which I don't know which is worse.

Mr. Howard: Well I, I would if the motioner takes that friendly amendment of the date change I would definitely support the 18th recognizing that December 5th is going to be a very long night.

Mr. Rhodes: It is, from the get go. I don't have strong opposition I just would acknowledge that we will have to dispose of it at that same session.

Mr. Howard: Unless you want to move it to the first Wednesday?

Mr. Hirons: Will our meeting be on the 4th of January, our first meeting in January?

Mr. Harvey: Yes it would be the first Wednesday in January.

Mr. Hirons: Okay. I think that would be a wiser move than... make the public hearing the 4th of January. Then if we do have a need to defer we would be able to defer to the 18th any issues.

Mr. Apicella: Mr. Chairman may I amend my motion to request that the public hearing date be the 4th of January.

Mr. Howard: Yes if the seconder agrees.

Mrs. Hazard: I agree.

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Mr. Howard: Okay.

Mr. Rhodes: No, I'd like to request we go back to the 5th, no I'm just kidding.

Mr. Howard: Any discussion? Any further discussion? Hearing none I'll now call for the vote. All those in favor of sending to public hearing the amendment to the Zoning Ordinance for Wetland Mitigation Bank signify by saying aye.

Mr. Fields: Aye.

Mr. Hirons: Aye.

Mr. Rhodes: Aye.

Ms. Hazard: Aye.

Mr. Apicella: Aye

Ms. Kirkman: Aye.

Mr. Howard: Aye. Opposed Nay. Motion carries 7-0. Mr. Parker wasn't expecting that. Okay that brings us to item number 11. The Tyler Estates Preliminary Subdivision Plan. And I believe that's Mrs. Ennis, right?

Mr. Apicella: That's correct Mr. Chairman.

Mr. Howard: It would have to be she's the only one left.

11. SUB2501460; Tyler Estates Preliminary Subdivision Plan - A preliminary subdivision plan for 6 single family detached units, zoned A-2 consisting of 12.39 acres located on the north side of Ramoth Church Road between Freedom Lane and Powhatan Trail on Assessor's Parcel 38-11 within the Hartwood Election District. (**Time Limit: January 25, 2012**)

Mrs. Ennis: Morning, I mean evening. Item number 11, computer please. Item number 11 is Tyler Estates Preliminary Subdivision Plan. The applicant is Daniel Payne of Marquis Properties LLC. The engineer is Mark Branca with Branca Development. John Moran is here representing the engineer. The application date was March 16, 2005 and the TRC date was October 25, 2005. Tyler Estates is located on Assessor's Parcel 38-11, its located on the north side of Ramoth Church Road, west of Freedom Lane. The parcel size is 12.39 acres and it's currently zoned A-2. They have a minimum lot size of one acre and they're proposing to... five lots, single family lots within the subdivision. It's also within the Hartwood Election district. As you can see here, this is the outline of the parcel. I wanted to let you know that this was a defacto subdivision that was split by the... Ramoth Church Road. The other half of it is over here on this, so this portion of it, parcel 11 is in two parcels. So there was a letter on page 7 of your plan that that stated that it was a defacto subdivision. As you can see in this, that the side lot lines are all odd shaped. You know they're not perpendicular to the road. This was an existing lot that was created years ago. This is the current zoning I wanted you to see that it is all agricultural all around it. This is the preliminary subdivision plan that they are laying out. This is the north arrow here going up and there's an ingress/egress here that's existing is the fifty foot ingress/egress and they're going to take a state road that they're proposing and they're going to vacate

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that ingress/egress easement. The access to this parcel is from Ramoth Church Road through and existing again ingress/egress that currently serves three parcels back there. The easement is being vacated and replaced with a state maintained road. Although the plan was submitted prior to SSAR requirements, they do currently meet SSAR requirements for VDOT. I wanted to let you know that there are wetlands on parcels 4 and 5 and they are proposing to do a shared driveway to minimize the impacts of the wetlands. Also the parcel is located within the Urban Service Area. A waiver was granted in July 2006 for mandatory sewer connection by the Board of Supervisors. And that letter is also on page 7. So this parcel will be served by public water and private septic systems. They are utilizing two bio-retention facilities, they're located on the front of 4 and 5... parcels... lots 4 and 5 and they are showing 2.59 acres of open space. Staff does recommend approval of Tyler Estates Preliminary Subdivision Plan and I would like to entertain any questions that the Commission might have of me.

Mr. Howard: Thank you Mrs. Ennis. I'll bring it back to the Planning Commission. Are there any questions of staff at this time? Ms. Kirkman.

Ms. Kirkman: Could you please go to the first slide that has the timing?

Mrs. Ennis: Computer please. The first slide?

Ms. Kirkman: Whichever slide it was that listed when it was submitted and...

Mrs. Ennis: Oh, the a... okay yes. In 2005.

Ms. Kirkman: So this application is six years old... six and a half years old.

Mrs. Ennis: Yes.

Ms. Kirkman: How is that we have a subdivision plan that's application that's six and a half years old?

Mrs. Ennis: It was prior to any of the other... you know, the Ordinance. They had issues with the soils work and they had some... they sold the property. It was one developer at one time and then it was sold. I think... I don't know the applicant can, I mean Mr. Moran can refer to that. But there were several other little factors that went on, but if you don't mind I'll let him say what his issues were, why they waited so long to do that.

Ms. Kirkman: And when the... and this is located inside the Urban Services Area.

Mrs. Ennis: Yes ma'am.

Ms. Kirkman: And when the waiver was granted by the Board five years ago in 2006, is that when it was granted?

Mr. Harvey: Yes that is correct.

Ms. Kirkman: When it was granted five years ago was this the subdivision plan that it was granted for?

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Mrs. Ennis: It was granted in July 2011 by Reso 10-195.

Ms. Kirkman: Okay. So that is recent.

Mrs. Ennis: Yes ma'am.

Ms. Kirkman: Okay.

Mrs. Ennis: Because it wasn't in the Urban Service Area when it first started, I don't think. And then as it... because it stayed so long in the system it became in the Urban Service area. Because he didn't need the waiver in the beginning when it first started in 2005. He didn't need a waiver so that came along as the project progressed and then we found out in 2009 that he needed a waiver from the Board of Supervisors. And it took Utilities like a year to get all that situated.

Mr. Harvey: Then also this application was filed prior to our time limits Ordinance.

Mrs. Ennis: Yes sir.

Mr. Harvey: So with the time limits Ordinance when it was adopted, to when it became effective for this property there was a one year grace period so that also extended some of the time.

Mrs. Ennis: And it has been progressing all year, it has been progressing by reviews and meetings and stuff, such. Any other questions?

Ms. Howard: Does the applicant have any additional information to add to that question. To have a chance to explain that.

John Moran: My name is John Moran I'm with Branca Development, LLC. The only thing I can add is the owner picked this up in a foreclosure auction. And then Bowman Consulting was doing the engineering on it. We just picked it up from there and that's a timeframe when it was under an Urban Service Area and then we had to go back and get a waiver from the Board of Supervisors to put drainfields in. And we looked at getting out to the manhole that was all the way out by Virginia Paving at the time. But it was a mile of sewer it would require easements and all sorts of mess and it just was not feasible to do it and I guess that why they granted to us when we asked for it.

Mr. Howard: Okay, any additional questions? Ms. Hazard.

Ms. Hazard: I guess my main questions are going to be about the soil, because I will admit I've very rarely seen a sheet 4 of 7 that looks like this one. And I right now with some of the soil issues that have been identified in the County, how much... are there going to be retaining walls to handle this? How is this going to be dealt with because it's been eluded to that there are soil issues and right now that makes... me gives me great pause.

Mr. Moran: The only soils I know are the drain field soils that are out there. Now as far as the constructability of houses and so forth there's going to be... for instance, lot 1 and 2 are going to be sort of an up hill type house that you're going to have say the back of the house with dirt up against it and bringing the water around. I think 3 and 4, they could be a slab on grade or buried basement. It would be a walkout. And lot 5 would probably just be a buried basement or some sort of crawl space

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set up. It's going to be tough to make some things work out there. And there could be retaining walls when grading plans are done for the building construction of the homes. As far as the street, I feel like I can follow existing grade coming in with the driveway that's there within the fifty foot easement. And if I have to grade out then I have to get the easements that are necessary from the adjacent owners.

Mrs. Hazard: So at what point will those decisions then be made about these retaining walls and other?

Mr. Moran: It would be at the construction plan phase. In most cases I feel I can get things in without walls unless the soils... or the geo-technical would require it. I think I can make the grades work with everything in there.

Mrs. Hazard: Unfortunately we have a house that they made it work and now they have no backyard. I am just...

Mr. Moran: I've been reading that in the paper.

Mrs. Hazard: I just have concerns, let me just look at this a little bit further. I mean I know we have talked about this but hearing words like the soils are a problem gives me great pause to as a County want to approve it without having more information. But maybe just for me so I have to defer to any other Commissioners to any questions they have.

Mr. Howard: Any additional questions for us staff or the applicant? Let me just point out Mrs. Hazard I know it's in your... it's in Hartwood I believe, right? But there's still time on this so if you're...

Mr. Moran: It has B & C soils for the most part.

Mrs. Hazard: Or it can just be for my edification that I... you know that I would like to feel a little better understanding the soils having just watch some fairly dramatic things happen to people. I don't want to be, you know approving things that can't work. I know ultimately we have to move forward but for me I personally would need a little more information. And I know that we've talked but just in light of events that have occurred it makes this a much more pressing issue to me.

Mr. Moran: That is no problem. I'll talk with the owner and then probably get with somebody that understands the soils better than myself and get them to put something together.

Mr. Howard: And maybe we can have them back here at the next meeting.

Mr. Moran: Okay.

Mr. Howard: To answer some of those questions.

Mr. Moran: And I do feel that when I actually start constructing house and so I won't have a lot of fills in areas. I think a lot of these areas that have been failing is because they have been putting some massive fills in some areas in those places.

Mrs. Hazard: And I think I need to understand that a little better as we move forward. Therefore unless there are any other, oh...

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Mr. Howard: No, we can just move this to unfinished business in the next meeting.

Mrs. Hazard: That would be my request is if we could defer to the 16th, November 16th.

Mr. Moran: Okay.

Mr. Howard: Sure.

Mr. Rhodes: Second.

Mr. Howard: So there's a motion to move this to unfinished business and then take it up again on November 16th seconded by Mr. Rhodes. Any further discussion? Hearing none we'll call for the vote. All those in favor of deferring signify by saying aye.

Mr. Fields: Aye.

Mr. Hirons: Aye.

Mr. Rhodes: Aye.

Ms. Hazard: Aye.

Mr. Apicella: Aye.

Ms. Kirkman: Aye.

Mr. Howard: Aye. Opposed Nay. Motion carries 7-0. Thank you.

Mr. Rhodes: And the primary comeback being soils for discussion?

Mr. Howard: Right, soil discussion. And there's still time after that too.

Mr. Rhodes: Yes.

Mr. Howard: It's been waiting six years no need to rush it now. Alright that brings us to Planning Directors report.

PLANNING DIRECTOR'S REPORT

Mr. Harvey: Yes Mr. Chairman my reports fairly short. We have no public hearing scheduled for the 16th therefore we have 4 items that were carried over from tonight's meeting for your November 16th meeting.

Mr. Howard: Good.

Mr. Harvey: That's my report.

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Mr. Howard: Maybe we should do something and have like a turkey dinner or something. Alright, County Attorney's report.

COUNTY ATTORNEY'S REPORT

Ms. McClendon: No report at this time Mr. Chairman.

PUBLIC HEARINGS

None

COMMITTEE REPORTS

CHAIRMAN'S REPORT

Mr. Howard: I don't have a report either. Any other business by any member? No. Anyone want to move to approve the minutes of September 21st?

APPROVAL OF MINUTES

September 21, 2011

Mr. Rhodes: Mr. Chairman I make a motion for approval of the September 21st minutes noting that I have two very small editorial modifications that change nothing about the content.

Mr. Hirons: Second.

Mr. Howard: Second by Mr. Hirons. Any discussion, you want to...

Mr. Rhodes: I can just share with them page 68 of 109 and I'll give this to you, Denise, line 3214 attributes a comment to Mr. Fields and it's actually mine and then on page 67 of 109 line 3196 there's just one word change it says vent but it was actually bent. But I can give those to Denise.

Mr. Howard: All those in favor of the motion which is approving the minutes of September 21, 2011 signify by saying aye.

Mr. Fields: Aye.

Mr. Hirons: Aye.

Mr. Rhodes: Aye.

Ms. Hazard: Aye.

Ms. Kirkman: Aye.

Mr. Howard: Aye. Opposed Nay.

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Mr. Apicella: Mr. Chairman I abstain.

Mr. Howard: Motion carries 6-0-1. One abstention.

October 5, 2011

Mr. Rhodes: Mr. Chairman I would like to make motion for approval of October 5, 2011 minutes.

Mr. Hirons: Second.

Mr. Howard: Second by Mr. Hirons.

Ms. Kirkman: Mr. Chair, I am going to abstain.

Mr. Howard: Okay, you were not present I suppose. Okay. And that is the same for Mr. Apicella? So any discussion... any further discussion? Alright all those in favor of approving October 5, 2011 minutes signify by saying aye.

Mr. Fields: Aye.

Mr. Hirons: Aye.

Mr. Rhodes: Aye.

Ms. Hazard: Aye.

Mr. Apicella: Aye.

Mr. Howard: Aye. Opposed Nay. And there are two abstentions?

Mr. Apicella: No I was here on the 5th.

Mr. Howard: You were here. Okay so there is one abstention.

Mr. Apicella: You missed me huh?

Mr. Howard: Sorry, same count 6-0-1. I apologize. Meeting is adjourned. Thank you very much.

OTHER BUSINESS

ADJOURNMENT

With no further business to discuss, the meeting was adjourned at 11:35 p.m.